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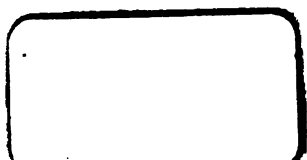
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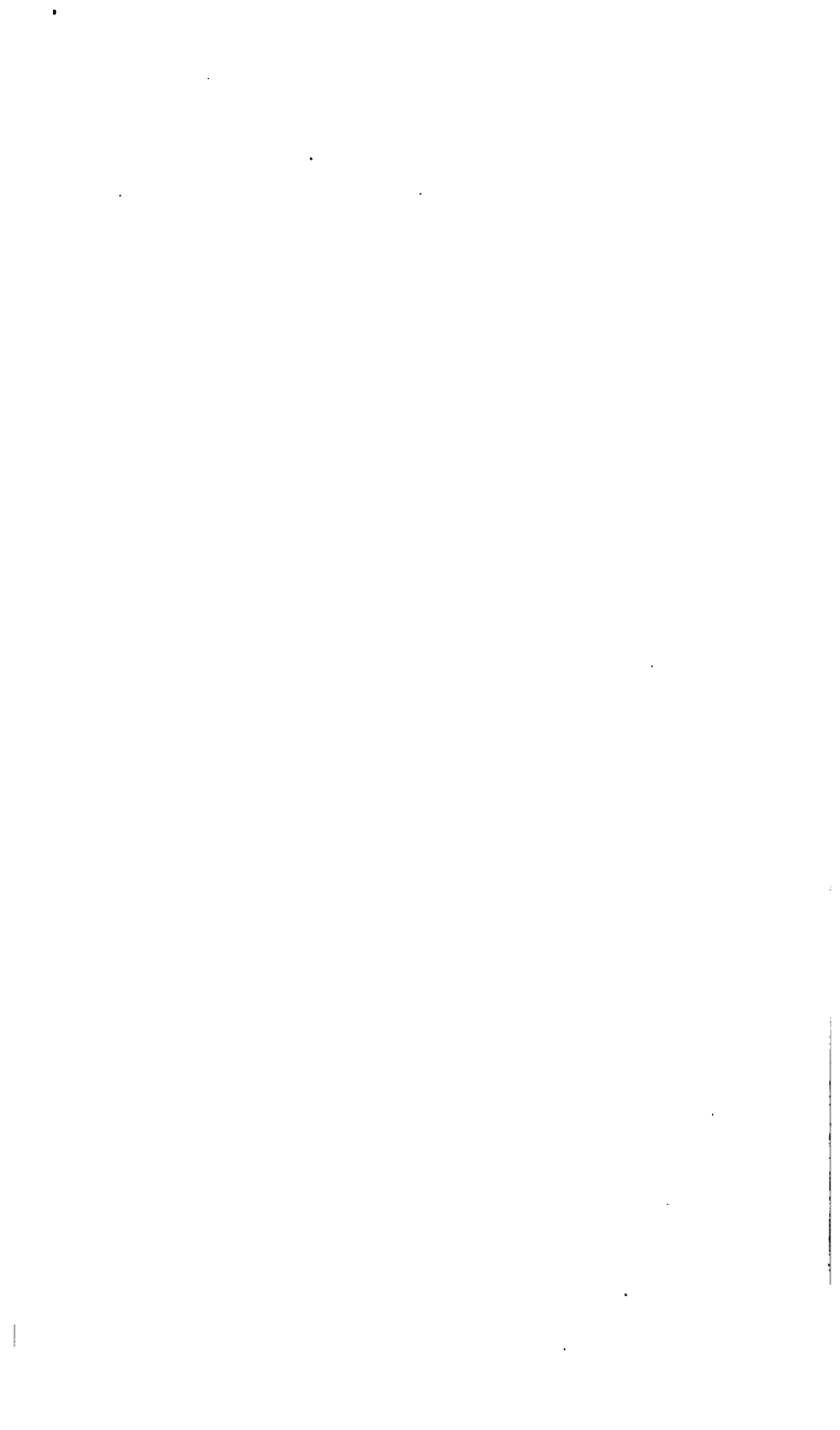
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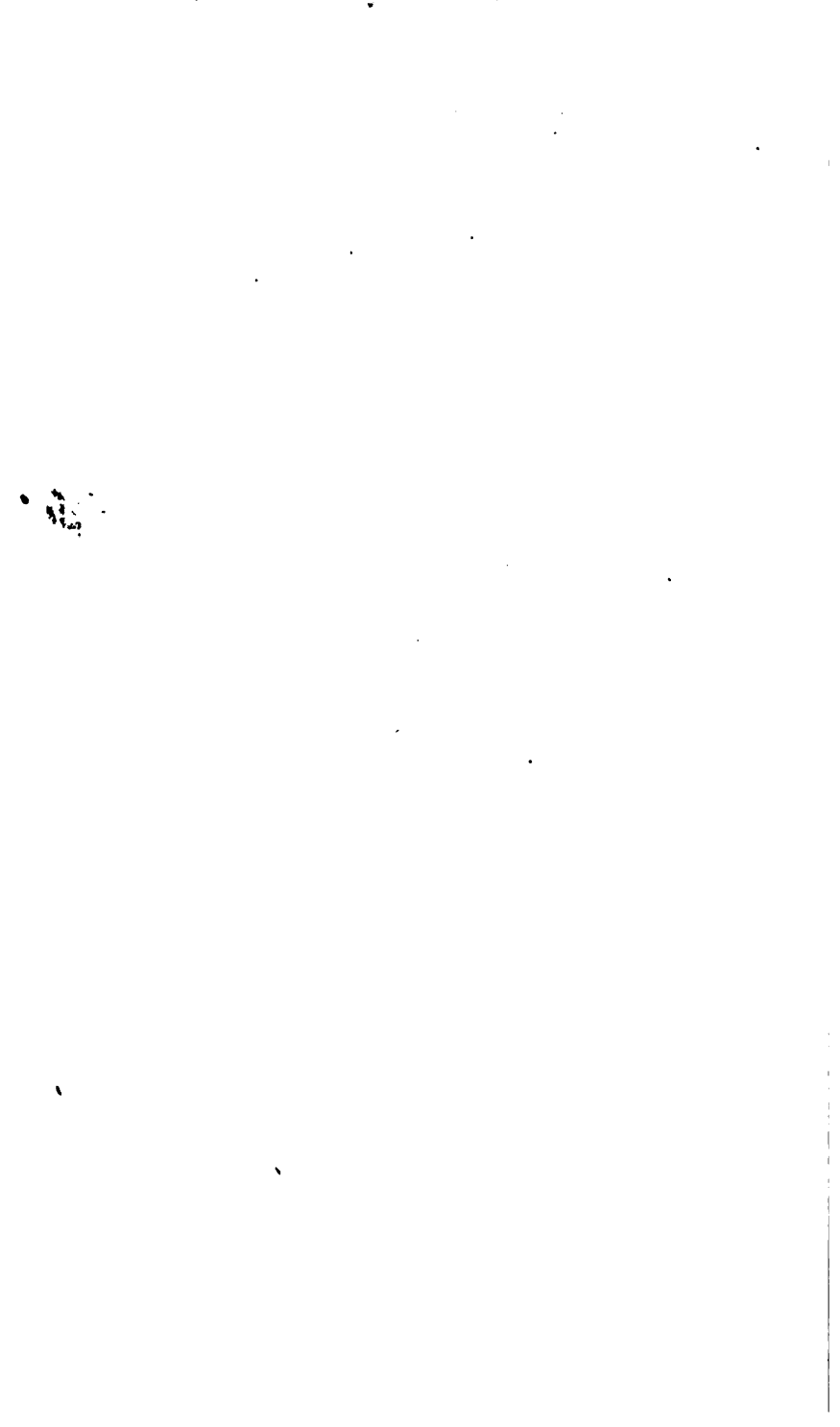


CN  
Plowden,









# Jura Anglorum.

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## THE RIGHTS OF ENGLISHMEN.

BY FRANCIS PLOWDEN, Esq.

CONVEYANCER,

OF THE MIDDLE TEMPLE.

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*Felices nimium, sua si bona norint  
Anglicola !*

Too happy Britons, if their Rights they knew !

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# THE DEDICATION.

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To the Right Honourable LORD KENYON,  
BARON KENYON, of Gredington, in the  
County of Flint, LORD CHIEF JUSTICE  
of his MAJESTY'S COURT of KING'S  
BENCH, &c. &c.

AT a time when abilities and talents are most shamefully prostituted to the execrable purposes of decrying subordination to civil power, and enervating the arm of lawful government, my grateful boast is the permission to dedicate to your Lordship these humble efforts to explain the nature and reasons of our constitution and government to the ignorant, and to enforce their energy and obligations against the malevolent.—Your exemplary lessons upon the perfections of our constitution and government have taught the nation to admire your ability, and exult in your disposition to preserve them in full purity and vigor. And I feel the satisfactory conviction of bearing a truly patriotic attachment to our constitution, whilst I am permitted to have the honour of subscribing myself, with respect and esteem,

MY LORD,

YOUR LORDSHIP'S

DEVOTED HUMBLE SERVANT,

FRANCIS PLOWDEN.

9 Y N

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## INTRODUCTORY CONSIDERATIONS.

**W**HEN I profess to have undertaken the arduous task of discussing the *Rights of Englishmen*, I shudder at every view, which presents itself, in the vast variety of difficulties, that threaten me in the execution of the design. The magnitude and importance of the subject call aloud for the exertions of every man, who makes his country's cause his own. No subject so deeply affects us as citizens ; no subject, in so short a period, ever produced such a variety of discussions, dissertations, and arguments ; and I fear, that I am but too fully warranted in asserting, that no subject has ever been more misconceived, more misrepresented, more misapplied.

The importance  
of the subject.

When we see men of the most enlightened minds differ so widely upon principles apparently clear and uncontrovertible ; when we read works of great erudition and strength of argument written upon these principles, to inculcate doctrines the most repugnant and

B

con-



Misconception,  
misrepresentation,  
and mis-  
application of  
the principles.

contradictory ; when, in the various revolutions of empires, we see the most opposite effects produced by these very principles, what other conclusion can be drawn, than that the principles themselves have been misconceived, misrepresented, and misapplied?

Apology for this  
publication.

It would derogate from the dignity of the subject under our consideration, were I to descend into personal altercation or controversy with the different persons, who have already, by their publications, taken a decisive part in the agitation of the question : a question the most elevated, dignified, and important, that can employ the mind of man, as it most essentially affects his happiness, welfare, and existence, in this state of mortality. An eloquent writer has afforded me a most consolatory apology for offering to the public my humble efforts, after the exertion of so many others of superior talents, information, and experience \*. “ Too many  
“ minds cannot be employed on a contro-  
“ versy so immense, as to present the most  
“ various aspects to different understandings,  
“ and so important, that the more correct  
“ statement of one fact, or the more success-  
“ ful illustration of one argument, will at

\* Mr. Macintosh's Advertisement to his *Vindiciæ Gallicæ*.

“ least rescue a book from the imputation of  
“ having been written in vain.”

In the combination of the political circumstances of the present day, I know not how I can render a more essential service to my country, than by endeavouring faithfully to represent, and strongly to impress the minds of my countrymen with the true genuine principles of the *Rights of Man*; for upon this basis hath been raised the most brilliant and stupendous work of human œconomy, the blessed and glorious *constitution* of the British empire. The great Chancellor Fortescue entertained so sublime an idea of it, as early as in the fourteenth century, that he said \*: “ And for the same  
“ reason it is, that † St. Thomas is supposed  
“ to wish, that all the kingdoms and nations  
“ in the world were governed, in the political way, as we are.” And the same learned Chancellor, in the instructions, which he gave to his royal pupil Prince Edward, the eldest son of King Henry the Sixth, carries his encomium of our laws and constitution to the very highest possible hyperbole.‡:  
“ Rejoice, therefore, my good Prince, that

Chancellor Fortescue's exalted ideas of our laws.

\* De Laud. Leg. Ang. c. xxxvii. p. 86.

† This idea of St. Thomas Aquinas is taken from his book *De Regimine Principum*.

‡ De Laud. Leg. Ang. c. ix. p. 18.

“ such is the law of the kingdom, which you  
 “ are to inherit, because it will afford both  
 “ to yourself and subjects the greatest secu-  
 “ rity and satisfaction. With such a law,  
 “ says the same St. Thomas, all mankind  
 “ would have been governed, if in Paradise  
 “ they had not transgressed the law of God.”

Reasons for  
 avoiding any  
 foreign matter.

The preference and superiority which our constitution claims over every other known political form of government, will confine my considerations solely to mine own country. The introduction of foreign matter, besides diverting our minds from the proper attention to ourselves, would argue an inadequacy in our establishment to elucidate and enforce the fundamental principles of our constitution, which are, in fact, no other than those of the *Rights of Man*.

Enlightened as the present age is, or pretends to be, it must appear highly paradoxical, that there should exist a question of difference upon principles apparently so clear and perspicuous, that, like other first principles in philosophy, they are to be taken upon credit, and submitted to without hesitation; for *perspicua non sunt probanda* §. “ What our  
 “ predecessors took great pains to prove, we

§ Third Letter to Mr. Burke, p. 23.

“ now receive as *axioms*, and without hesitation act upon them,” says Dr. Priestley, after having laid down, what he supposes to be the fundamental or first principles of government, according to Somers, Locke, and Hoadley. However, this sort of unquestioning deference in the blind adoption of principles is pointedly reprobated by Mr. Locke \*. “ Such as are careful (as they call it) to principle children well (and few there be, who have not a set of those principles for them, which they believe in) instil into the unwary, and as yet unprejudiced understanding (for white paper receives any characters) those doctrines, they would have them retain and possess. These being taught them, as soon as they have any apprehension, and still, as they grow up, confirmed to them, either by the open profession or tacit consent of all they have to do with, or at least by those, of whose wisdom, knowledge and piety, they have an opinion, who never suffer these propositions to be otherwise mentioned, but as the basis and foundation, on which they build their religion or manners, come by these means

Dr. Priestley recommends the adoption of principles without hesitation.

Mr. Locke reprobates it.

\* Locke upon the Human Understanding, l. 1. p. 21. in the folio edition.

“ to have the reputation of unquestionable,  
 “ self-evident, and innate truths.

“ This is evidently the case of all chil-  
 “ dren and young folk ; and custom, a greater  
 “ power than nature, seldom failing to make  
 “ them worship for divine, what she hath  
 “ inured them to bow their minds and sub-  
 “ mit their understandings to, it is no won-  
 “ der that grown men, either perplexed in  
 “ the necessary affairs of life, or hot in the  
 “ pursuit of pleasures, should not seriously sit  
 “ down to examine their own tenets, espe-  
 “ cially as one of their principles is, that  
 “ principles ought not to be questioned.  
 “ And had men leisure, parts, and will, who  
 “ is there almost, that dare shake the foun-  
 “ dation of all his past thoughts and actions,  
 “ and endure to bring upon himself the  
 “ shame of having been a long time wholly  
 “ in mistake and error ? Who is there hardy  
 “ enough to contend with the reproach, which  
 “ is every where prepared for those, who dare  
 “ to venture to dissent from the received opi-  
 “ nions of their country or party ?”

Thus doth this great philosopher not only  
 recommend, but insist upon, the necessity of  
 every one’s freely examining the principles of  
 his own political and civil conduct. And  
 when

when I enter upon the awful task, I shield myself under the duty of patriotism, against the disheartening efforts of opposition, and the galling taunts of arrogance and presumption. I am fully aware of the hackneyed affectation, with which many modern writers assume the exclusive privilege of illuminating mankind; as if our predecessors had worked through their lives, like moles, in the dark, and had never risen into the light, but by the chance of their own blind direction, or to injure the ground, through which they had emerged from their dark recesses. Impressed, I presume, with this idea, did the late Dr. Price thus address himself to his audience, in a discourse, which has been since printed § :  
“ Why are the nations of the world so  
“ patient under despotism? Why do they  
“ crouch to tyrants, or submit to be treated,  
“ as if they were a herd of cattle? Is it not  
“ because they are kept in darkness, and  
“ want knowledge?—Enlighten them, and  
“ you will elevate them; shew them they  
“ are men, and they will act like men; give  
“ them just ideas of civil government, and  
“ let them know that it is an expedient for

Modern writers  
affect to illumina-  
te mankind.

§ Dr. Price's Discourse on the Love of our Country,  
p. 12.

\* gaining

## Introductory Considerations.

“gaining protection against injury, and defending their rights, and it will be impossible for them to submit to governments, which, like most of those now in the world, are usurpations on the rights of men, and little better than contrivances for enabling the *few* to oppress the *many*.”

The true principle of equalization is to allow to others what we claim ourselves.

The first principle of the true equalization of mankind is to assume no right to ourselves, which we deny to others. As, therefore, I am unwilling to submit my own assent to any principles, or doctrines grounded upon them, without previous investigation and discussion; so do I presume and admit the same right in others, in the most unexceptionable latitude. To them I allow the most unbiassed freedom of judgment, because the same I claim to myself. And as I experience no small degree of indignation, when the difference of my opinion from that of others is attributed to ignorance; so do I feel an equal degree of indelicacy, in ascribing the disagreement of that of others from my own to ignorance of the question in agitation between us.

Truth to be sought impartially from all parties.

In forming my mind upon the great and important subject of the *Rights of Man*, I have endeavoured to draw knowledge and information from every source, from which

I thought

I thought it likely to spring. *Nullius addictus jurare in verba magistri*, I as readily admit of a true proposition laid down by a Tory, as by a Whig, by a Puritan as by a Church-man, by a Leveller as by a Royalist. If my labours, and researches do in the smallest degree contribute to settle the minds of my countrymen upon the subject, that reward will satisfy my proudest expectations. † “Whenever  
“ the interests of truth and liberty are at-  
“ tacked, it is to be wished, that some would  
“ stand up in the defence, whether they ac-  
“ quit themselves better, than their prede-  
“ cessors in the same good old cause or not,  
“ New books, in defence of any principles  
“ whatever, will be read by many persons,  
“ who will not look into *old books* for the  
“ proper answers to them.”

We are assured, from the unerring authority of the holy Bible, that the days of man have been much curtailed, since he was first formed by his Creator ; and we may rationally infer, that the natural strength, vigour, and power of that body, which was to last many hundred years, were greater, than what are merely requisite to support it through a tenth part of that period ; but I can no where

† Preface to Dr. Priestley's *Essay on the First Principles of Government.*



The intellectual powers of man are now neither more nor less perfect, than they formerly were.

Antiquity not conclusive evidence of truth.

trace even a suggestion, that the minds and intellects of our antediluvian ancestors were more vigorous or perfect, than those of their posterity; though from the excess of their longevity they must have had the advantage of experimental information: yet Solomon, who was endowed with more wisdom, than any of his predecessors, existed long after this abbreviation of the natural days of man. I am free to own, it has ever appeared to me as unwarrantable to maintain, that the true principles of civil and religious liberty have only been disclosed to the present generation, as to attribute an exclusive preference to all the doctrines of our predecessors, upon the mere score of antiquity. Every succeeding age must necessarily have the advantages of observation and experience; but beyond these I can discover no traits, that mark the superiority of the present age above any that have preceded it †. The more closely we

† “ *For as our modern wits behold, mounted a pick-back  
on the old, &c.* Hudib. 1st pt. 2d canto. v. 71, 72. A  
banter on those modern writers, who, as Sir W. Temple  
observes, (*Essay on ancient and modern Learning*), that  
as to knowledge, the moderns must have more, than the  
antients, because they have the advantage both of  
theirs and their own; which is commonly illustrated  
by a dwarf’s standing upon a giant’s shoulders, or  
seeing more or farther than he.” Grey’s Hud. v. 1.  
p. 104.

attend to the various excellencies of individuals within our own acquaintance, the more fully we shall be convinced, that the innate powers of men have not varied for these two thousand years; but that they have ever acquired a degree of excellence proportioned to the variety of the circumstances, that called them into action. Thus are obviously traced the various causes, which through the succession of ages, have given birth to, encouraged, and perfected the different arts and sciences. I cannot help differing, upon this point, from Dr. Priestley †, who says, “ That  
“ the human species itself is capable of a  
“ similar and unbounded improvement;  
“ whereby mankind in a latter age are  
“ greatly superior to mankind, in a former  
“ age, the individuals being taken at the  
“ same time of life. Of this progress of the  
“ species, brute animals are more incapable,  
“ than they are of that relating to individuals. No horse of this age seems to  
“ have any advantage over other horses of  
“ former ages; and if there can be any improvement in the species, it is owing to  
“ our manner of breeding and training them:  
“ but a man at this time, who has been  
“ tolerably well educated, in an improved

Our present existence gives us no such advantage over our predecessors as Dr. Priestley teaches.

† *Essay on the First Principles of Government*, p. 2.

“ Christian

“ Christian country, is a being possessed of  
 “ much greater power, to be, and to make,  
 “ happy, than a person of the same age in  
 “ the same or any other country some cen-  
 “ turies ago.”

Hence, assured that this learned philosopher will not refuse me, on account of my differing from some of his opinions, the common superiority of reasoning, which my existence in the present age gives me over all my ancestors and predecessors, (though unconscious of the advantage) I lay in my full claim to it, and shall endeavour to support it more by the perspicuity and strength of arguments gleaned from others, than by my own.

The design of  
 the work.

In the prosecution of my design, I shall follow the order, which the subject seems plainly to prescribe : I shall consider man, first, in the pure state of nature ; then, in the general state of society ; and lastly, in the state of the English government and constitution ; and as every Englishman, or person living under the protection of the English government, assumes or contracts a relative duty and obligation to the community, of which he is a member, I shall endeavour to enforce the indispensable coercion of these duties and obligations, by the examination and exposition of the instances, in which they may be infringed  
 and

and violated by crimes against the state ; and I shall conclude by a faithful narrative of the effects already produced in this island, by the dissemination of the very doctrines, which are now attempted to be revived with such infatuated zeal.

If Britons shall choose again to get up the old tragedy, I shall but have given in the list of the *dramatis personæ*, who are most qualified to keep up the genuine spirit of the play.

A cool and collected revival of the argument may determine my countrymen, either to the repetition, or irrevocable damnation, of the piece.

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## CHAP. I.

### OF THE STATE OF NATURE.

Reasons for considering the subject.

\* **T**HE contemplation of the British constitution in its origin, in its structure, and in its effects, is the important and the arduous

\* The trite adage of *nil sub sole novum* is more emphatically applicable to the subject under our present consideration, than to any other. This subject has in all ages been the primary object of the politician; the historian, and the philosopher; and in many ages, such have been the exalted ideas entertained of its dignity, that it has constituted a very considerable part of theology. As in religion, the written word of God, which, from its Divine inspiration, must essentially bear a determined and unequivocal meaning, is in disputes and differences often resorted to, and modified by the appellants to its authority, so as to colour, countenance, and support the most extravagant and contradictory opinions; so few or no political errors, treasons, rebellions, or usurpations have at any time been attempted to be justified, but by appealing and resorting to the authority of the *Rights of Man*. Since the subject has been so often and so fully considered by others, I shall think I give more satisfaction to the public by collecting and arranging their opinions upon it, than by endeavouring to dress and serve up the old substance in the disguise of some new fashion. I shall therefore

arduous task, which I have undertaken.

§ “ The duty incumbent upon all, who have leisure and abilities, to endeavour to understand, in order to maintain it in perfection, are those high motives, by which Englishmen are called upon to examine the principles, to study the contrivance, and to contemplate the operations of that vast political machine, which is so much the envy of others, and which should be the supreme admiration of ourselves, particularly at a time, when a party of discontented spirits, under the assumed character of philosophers, are labouring to abuse what they do not understand, to point out imperfections, which have no existence,

therefore offer no other apology for preferring what others, and even I myself, have on other occasions published upon the subject. My primary object in making this publication is to form and fix the minds of my countrymen upon the most important of all civil and political subjects, and to do away the effects of uncertainty, confusion, and error, under which some of them now labour. I most cordially adopt the sentiments of Doctor Price, when he says, in the discourse already alluded to, (p. 13.) “ Happier far must he be, if at the same time he has reason to believe, he has been successful, and actually contributed by his instructions, to disseminate among his fellow-creatures just notions of themselves, of their rights, of religion, and the nature and end of civil government.”

§ Dr. Tatham's Letters to Mr. Burke, p. 7.

to

to find defects instead of excellencies, to traduce its general worth, and to make our countrymen dissatisfied with what they ought to love." But as the nature, properties, and effects of the most ingenious piece of mechanism can only be explained upon those mathematical principles, upon which it was constructed, and which had their existence, independent of this particular application of them : so § " before intelligent beings existed, they were possible ; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. To say, that there is nothing just or unjust, but what is commanded or forbidden by positive laws, is the same as saying, that before the describing of a circle, all the radii were not equal."

The state of nature merely theoretical and metaphysical.

This state of nature, in which all philosophers consider man, and the rights and properties inherent in his nature, is a mere theoretical and metaphysical state, pre-existing only in the mind, before the physical existence of any human entity whatever. As this state of nature then never had any real existence, so also the various qualities, properties, rights, powers, and adjuncts annexed unto it, are

§ Monteq. Spirit of Laws, b. i. p. 2.

mere

mere creatures of the imagination, attributable only to man in this ideal state of speculation: they bear the same sort of analogy to the physical state of man in society, as principles and properties of mathematical points and lines bear to the practical rules of mechanics. As well might we attempt to handle and manufacture a mathematical point, as to move only upon the principles of this state of nature, being placed by the beneficence of our Creator in the physical state of society. Some of our greatest philosophers, as is often the case, to avoid pleonasm, and in the full glare of their own conviction, have omitted to say, in express words, that this state of nature, in which they considered man in the abstract, never had an actual, physical, or real existence in this world; and this omission has, perhaps, occasioned the error of many modern illuminators, who, from ignorance, have confounded the two stages together, or, from designed malice, have transplanted the attributes and properties of the one into the other.

To state the opinions of these philosophers upon the Rights of Man, in this state of nature, is to demonstrate, that they considered it as pre-existing and antecedent to the physical state of man's real existence.

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\* “To understand political power right, and derive it from its original, we must consider what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man; a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should be equal one amongst another, without subordination or subjection.”

† “Prior to all those laws are those of nature, so called, because they derive their force entirely from our frame and being. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society: *the laws received in such a state would be those of nature.*”

From the physical formation of Adam and Eve the state of pure nature was physically impossible.

It requires no argument to prove, when the physical civilized state of society commenced; for, from the commencement of

\* Locke upon Civil Government, p. 168.

† Montesquieu's Spirit of Laws.

this

this must be dated the impossible existence of the state of pure nature. Mr. Locke establishes this commencement from the formation and co-existence of our first parents, Adam and Eve; and he draws the necessity of it from the intrinsic nature and exigencies of man, as he has been actually formed and constituted by his Creator. • “ God having made man such a creature, that, in his own judgment, it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination, to drive him into society, as well as fitted him with understanding and language to continue and enjoy it. The first society was between man and wife; which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added.” This fact then is uncontrovertible, that the only individual, who can be said, in any sense, to have existed in the state of nature, was Adam, before the formation of his wife. But how these rights could be exercised by him in that forlorn state of solitude, I know as little, as I do of the period of its duration. When, therefore, we speak generally of the Rights of Man, we ought to be understood to

Man physically  
framed by God  
for society.

• Locke of Civil Government, c. vii. p. 188.

The exercise of rights imports the necessity of society.

Speak of those rights, which are attributable to man in the civilized state of society. Thus every discussion of the actual exercise of the Rights of Man imports necessarily the \* *contemplation of the social civil man, and no other*. And accordingly, Mr. Payne, having derided the futile and inept attempt to deduce the Rights of Man from any given period of antiquity, says, † “The fact is, that portions of antiquity, by proving every thing, establish nothing. It is authority against authority all the way, till we come to the divine origin of the Rights of Man at the creation. Here our enquiries find a resting place, and our reason finds a home. If a dispute about the Rights of Man had arose at the distance of an hundred years from the creation, it is to this source of authority they must have referred, and it is to the same source of authority, that we must now refer.”

Having thus distinctly marked the line of difference between the state of nature and the state of civil society, I shall proceed to state fully and clearly what rights are attributable to, or inherent in man in this state of nature. When writers talk of the transition of man

\* Burke's Reflections on the Revolution in France, p. 87.

† Payne's Rights of Man, p. 45.

from one of these states to the other, they do not mean to allude to any given time or occasion, in which mankind actually passed from the one to the other; but they do it by way of methodizing their ideas upon the subject; as philosophers, in discussing the nature of man, or any other created being, first consider the existence, before they enter upon the peculiar properties or attributes of the existing being, upon this axiom, that *prius est esse, quam esse talis*; although it be known, to every one, that the physical existence and specific modification of every created being are in reality simultaneous. In the like manner do they mention, in this supposed transition, the retention of some of their rights, and the surrender of others. \* “From this short review, it will be easy to distinguish between that class of natural rights, which man retains after entering into society, and those, which he throws into common stock, as a member of society. Of the distinction of these two sorts of rights, I shall hereafter have occasion to take notice.”

In this theoretic state of pure nature, the most perfect equality of mankind must necessarily exist; because it represents man in a general abstract point of view, that essentially pre-

Men viewed in the abstract as equal, are to be considered essentially in the state of nature.

\* Payne's Rights of Man, p. 49.

cludes

cludes all those circumstances, which, in the civilized state of society, form the various grounds of distinction, superiority, and pre-eminence, amongst individuals. \* The fundamental idea of man, in this state of nature, must have been that of equality with his fellow creatures; and, as a rational being, he must have been impressed with a conscious idea of his superiority over all irrational objects; and, by inference, he must have inclined rather to a similar precedency over his fellow creatures, than to a submission to them; for the effects of weakness, apprehension, and fear, which some philosophers have attributed to man in the state of nature, must have arisen from the internal sense of, and reflection upon mortality, and the principle of self preservation; not from an original or innate tendency to subjection to any created object. The idea of superiority was prior in man to that of dependence. The latter could never have occurred to him, till he had found out his wants, till he had felt his insufficiency to supply them. Independence then was essential to the state of nature; and hence is deduced the original right of option,

Independence  
essential to the  
state of nature.

\* Letter to Sir George Savile upon the Allegiance of a British Subject, by the Author. Printed in 1778.

to whom each one shall chuse to surrender his independence by a voluntary submission and subjection.

In this theoretical, or supposed transition of man from the state of nature to the state of society, such natural rights, as the individual actually retains independently of the society, of which he is a member, are said to be retained by him, as a part of those rights, which he is supposed to have possessed in the state of nature. Such are the free and uncontrouled power of directing all his animal motions; such the uninterrupted communication and intercourse of the soul with its creator; such the unrestrained freedom of his own thoughts: for so long as an individual occasions no harm, and offers no offence to his neighbour, by the exercise of any of these rights, the society cannot controul nor check him in the free exercise of them. \* “ The natural rights, which he retains, are all those, in which the power to execute is as perfect in the individual, as the right itself. Among this class, as is before mentioned, are all the intellectual rights, or rights of the mind; consequently, religion is one of those rights. The natural rights, which are not retained, are all those,

What natural rights are supposed to be retained by man, after his transition from the state of nature to that of society.

\* Payne's Rights of Man, p. 49.

in which, though the right is perfect in the individual, the power to execute it is defective: they answer not his purpose. A man, by natural right, has a right to judge in his own cause; and so far, as the right of the mind is concerned, he never surrenders it; but what availeth him to judge, if he has not power to redress? He therefore deposits this right in the common stock of society, and takes the arm of society, of which he is a part, in preference and addition to his own. Society grants him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right."

\* "We have now, in a few words, traced man from a natural individual to a member of society; and shewn, or endeavoured to shew, the quality of the natural rights retained, and of those which are exchanged for civil rights." But in this transition, the surrender or exchanged rights were so irrevocably transferred from the individual to the body at large, that it no longer remained at the liberty or option of individuals to reclaim, either in the whole, or in part, those rights, which had so become unalienably vested in the community.

\* Payne's Rights of Man, p. 50.

It is as singular, as it is unaccountable, that some of the illuminating philosophers of the present day should, even under the British constitution, claim and insist upon the actual exercise of these *natural Rights of Man*, when it is notorious, even to demonstration, that the exercise of them would be essentially destructive of all political and civil liberty, could they be really brought into action. For it is self-evident, that the perfect equalization of mankind, such as is attributable to this imaginary and merely speculative state of natural freedom, would prevent every individual from acquiring an exclusive right or property in any portion of this terraqueous globe, or in any other particle of matter, beyond that of his own corporeal frame. Liberty presupposes the possibility of acquiring and reaping the advantages of property; a right of receiving and giving aid and protection; and a power of bettering one's own condition, and providing for one's family: it presupposes virtue, in holding out its rewards; and the rewards of virtue necessarily induce distinction and preference of the virtuous over others, which are essentially contradictory to perfect equalization. The extent of this proposition, *men are all born equally free*, must include each individual human being, or it

The exercise of these natural rights impossible in the state of society.

says



says nothing ; but it admits of no other, than that original sense of equality inherent in the metaphysical essence of man, which is not applicable to the physical existence of social man, since it is essentially incompatible with the existence of society, which denominates man social. In this sense, Mr. Payne says truly, \* “ Every history of the creation, and every traditionary account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in establishing one point — the *unity of man* ; by which I mean, that man is all of one degree, and consequently, that all men are born equal, and with equal natural rights, in the same manner as if posterity had been continued by creation instead of generation, the latter being only the mode, by which the former is carried forward ; and consequently, every child born into the world must be considered as deriving its existence from God. The world is as new to him, as it was to the first man, that existed, and his natural right in it is of the same kind.”

The admission of these principles, into the state of civil society would prevent the very possibility of those social virtues, out of which

\* Payne's Rights of Man, p. 46.

arises the moral and political harmony of the universe. To view this with an impartial eye, we must make ample allowances for the exigencies, and even the foibles of human nature. We are so constituted by an all-wise Creator, that, although we act generally upon certain fundamental principles, that are essentially invariable, yet the prevalence of early prejudices, the force of example and habit, the impulse of passion, and the allurements of pleasure, create a great diversity in the customs, manners, and actions of men. In some societies, the philanthropy of peace is never broken into; others are in an uninterrupted state of warfare; some societies float in a sea of pleasurable delights, whilst others glory in the rudest practices, of which their nature is capable; one society countenances only the embellishment of the mind, whilst another encourages only the improvement of the body; some societies form themselves principally upon religious institutions, whilst others shew not even the most remote knowledge of a deity\*. It is then to be expected, that

Various principles of government formed on the diversity of men's dispositions.

\* I have been informed by several German missionaries, who had spent many years in the inland parts of California, that, contrary to their own opinions and expectations, and contrary to the generally received notion, that every man has some idea of a deity, they could not discover

An Englishman  
conceives no  
liberty where  
there is no law,  
no property, no  
religion.

that our practical ideas of the civilized state of Society will be generally drawn from the practical knowledge, we have of different societies. Under this influence, an Englishman will conceive no liberty, where there is no law, no property, no religion. The preservation of these constitutes the sum total of those rights and liberties, for which he will even sacrifice his life. Upon what ground then, shall an Englishman, even in theory, admit principles into civil government, which would justify the peasant in seizing the lands of his lord, the servant in demanding the property of his master, the labourer that of his employer, the robber in purloining his neighbour's purse, the adulterer in defiling the wife of another, the outlawed in reviling, contemning, and violating the laws of the community.

Mischiefs arising from the misunderstanding and misapplication of general propositions.

The greatest mischiefs arise from the misunderstanding and misapplication of terms. Millions of lives have been sacrificed in disputes and controversies upon the tenor and tendency of words. General abstract propositions are supereminently liable to this fatal evil, as I shall hereafter have occasion to

cover the most remote or faint trace of any public or private cult or worship amongst the natives of this extensive country.

the,

shew, in many calamitous instances of our own country. The use of words and terms can only be, to convey to others the real meaning and purport of what we think ourselves. Thus if I happen, by an unusual and awkward combination of words and phrases, to express my meaning and sentiments upon a subject to a third person, provided I am really understood, and my sentiments are admitted, I do not see upon what other ground, than that of grammar or syntax, a dispute can be instituted. And in the subject under our present consideration, if any other terms had been used to express the *natural Rights of Man, or the state of nature*, the whole animosity of the adverse disputants would have subsided, under the conviction that neither differed in opinion substantially from the other. I have read over most of the late publications upon the subject; and I do not find one of any note or consequence, that does not in fact and substance admit this state of nature, to which they annex or attribute these *indefeasible Rights of Man*, to be a mere imaginary state of speculation. Much ill blood would have been avoided, much labour and pain have been spared, and many lives have been preserved, if any other, than the

The present contest arises from the words *natural and nature*, being misunderstood or misapplied.

The bulk of mankind think of no other rights, than such as they can enjoy, which are *social rights*.

the epithet *natural* had been applied to these rights, and this state.

The bulk of mankind are little able, and less habituated, to analyze the import and tendency of words and phrases; and few amongst them will separate the idea, which they conceive the word *natural* conveys, from the state of their physical existence. They will plainly argue, that such as God hath made them, such they are; nor do they think of, nor demand any other rights, than such, as God hath given them for the purpose, for which in his goodness he created them. The practical doctrine from such argument will be, what I before quoted from Mr. Locke. "God having made man such a creature, that, in his own judgment, it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination, to drive him into society, as well as fitted him with understanding and language to continue and enjoy it." Thus, perhaps, more properly, though less technically speaking, we come to consider man in his *real natural* state, which is that of society. For Buchanan says truly: \*

\* Buchanan of the due Privilege of the Scots Government, p. 198.

“ First of all, then, we agree, that men by *nature* are made to live in society together, and for a communion of life.” \* “ Hitherto we have spoken only (and that but in part) of the natural Rights of Man. We have now to consider the *civil* Rights of Man, and to shew how the one originates out of the other. Man did not enter into society to become worse, than he was before, nor to have less rights, than he had before, but to have those rights better secured. His natural rights are the foundation of all his civil rights.” These will be the subject of the ensuing chapter.

\* Payne's Rights of Man, p. 48.

## C H A P.

## C H A P. II.

## OF THE STATE OF SOCIETY.

SOCIETY was the necessary consequence of the experimental discovery of man's wants and insufficiency to supply them in the theoretical state of *pure nature*. These wants were coeval with his physical existence; for, as Mr. Locke says, *God so made man, as to put him under strong obligations of necessity, convenience, and inclination, to drive him into society, as well as fitted him with understanding and language to continue and enjoy it.* And here, as Mr. Payne allows, *Our enquiries find a resting place, our reason finds a home.* This insufficiency of individuals sought a remedy in the assistance of others; mutual assistance brought on obligations, and obligations produced dependance. The diversity of age, strength, or talents, probably gave the first superiority over a promiscuous multitude (for parentage certainly gave the first superiority over individuals); this multiplied and varied, as the objects who possessed it; envy ever followed the possessor; and the consequences broke

Origin of society.

broke out into strifes, feuds, and wars. So  
\* “as soon as mankind enter into a state of  
society, they lose the sense of their weakness;  
the *equality ceases*, and then commences the  
state of war.” These ruinous effects in-  
creased, as mankind was multiplied; and the  
natural tendency to superiority urged indivi-  
duals to reduce their neighbours into a state  
of subjection. Still was man sensible of his  
own insufficiency, and he applied in need to  
his neighbour for assistance. This gradually  
formed men into distinct bodies: each body  
had their own respective views and interests;  
and hence arose the difference of communities  
or nations.

Origin of na-  
tions.

Societies then once formed, the interests of  
the individuals forming them became united  
in one common centre; they dropped the  
former sense of that weakness and indigence,  
which had driven them into society, and as-  
sumed a consequence (which I call political)  
from the newly acquired strength of their col-  
lected associates. The subsistence and pre-  
servation of their own community was their  
first concern; to defend themselves against  
the power and encroachments of others was  
their next. Thus did their collective exi-

Origin of go-  
vernment.

\* Montesq. Spirit of Laws, b. i. 26.



gencies enforce the necessity of order and government.

The rights of individuals in the state of nature transferred to the community in that of society.

It is a postulatam, that when men formed themselves into society, their natural rights were not given up nor destroyed, but were transferred only from the individual to the body at large. Whatever the former had an indefeasible right to do in the state of nature, the latter has an indefeasible right to do in the state of society; and throughout this state of society, the general interest of the community is the principle, upon which the constitution and particular laws of each state must be founded. The private considerations of individuals were given up, in the exchange of our natural rights, for the improved liberties of civil intercourse and society.

\* “ Men being, as has been said, by nature all free, equal, and independent, no one can be put out of his estate, and subjected to the political power of another, without his own consent. The only way, whereby any one divests himself of his natural liberty and puts on the bonds of civil society, is by agreeing with other men, to join and unite into a community, for their comfortable, safe, and peaceable living one amongst ano-

\* Locke of civil Government, p. 194.

ther,

ther, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were, in the liberty of the state of nature. When any number of men have so consented to make one community, or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act, and conclude the rest.

“ For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that, which acts any community, being only the consent of the individuals of it, and it being necessary to that, which is one body, to move one way, it is necessary the body should move that way, whither the great force carries it, which is the consent of the majority: or else it is impossible it should act, or continue one body, one community, which the consent of every individual, that united into it, agreed that it should, and so every one is bound, by that consent, to be concluded by the majority. And therefore we see, that in

The act of the majority concludes the whole.

assemblies impowered to act by positive laws, where no number is set by that positive law, which impowers them, the act of the majority passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole.

“ And thus every man, by consenting with others to make one body politic, under one government, puts himself under an obligation to every one of that society, to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact, if he be left free, and under no other ties, than he was in before in the state of nature.

“ Whoever, therefore, out of a state of nature, unite into a community, must be understood to give up all the power necessary to the ends, for which they unite into society to the majority of the community, unless they expressly agreed in any number less than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or need be, between the individuals, that enter into or make up a common-wealth. And thus, that, which begins and actually constitutes any political society, is nothing but the consent of any number

What constitutes  
a community  
and lawful go-  
vernment.

number of freemen, capable of a majority, to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any lawful government in the world."

Every man has the uncontrouled right of discussing these subjects with freedom : and in the progress of my investigation, I readily declare my opinion, that my predecessors of all ages, and of all descriptions, have seen, understood, and explained them, with as much perspicuity and precision, as the most illuminated philosopher of these discovering days of innovation.

These subjects discussed by our predecessors as well as by modern illuminators.

• " With Cicero, I think there is nothing done on earth more acceptable to the great God, who rules the world, than the associations of men legally united, which are called *civil incorporations*, whose several parts must be as compactly joined together as the several members of our body, and every one must have their proper function, to the end there may be a mutual co-operating for the good of the whole, and a mutual propelling of injuries, and a foreseeing of advantages, and these to be communicate, for engaging the benevolence of all amongst themselves."

• Buchanan of the due Privilege of the Scots Government in England, p. 179.

Although

Although we are now considering the Rights of Man in the real actual state of his physical existence and political incorporation with some community, we are not to lose sight of the rights, which he enjoyed in the pure state of nature; for as I before observed, these rights were never given up nor destroyed, but were transferred only from the individual to the body at large. Now although there have existed many differences and disputes about the rights of the community, or of the people; yet I find all writers unanimous in tracing or deducing them from Almighty God, as the source of all right, power, and authority whatsoever: for to whom we owe our existence, to him we owe all the benefits and advantages of that existence.

All power originally from God.

\* "Seeing, the apostle says, (Rom. xiii. 1.) that all power is from God, laws, which are made by men, (who for this end and purpose receive their power from God) may also be affirmed to be made by God, as saith the author of a book going under the name of *Auctor Causarum*; whatsoever the second doth, that doth the first cause, but in a more excellent manner." And † "There is no power but of God; that is, no

\* Fort. de Laud. Leg. Ang. c. iii. p. 5.

† Milton's Defence of the People of England, p. 64.

form,

form, no lawful constitution of any government. The most ancient laws, that are known to us, were formerly ascribed to God as their author. For the law, says Cicero in his *Philipp.* is no other than a rule of well-grounded reason, derived from God himself, enjoining whatever is just and right, and forbidding the contrary. So that the institution of magistracy is *jure divino*, and the end of it is, that mankind might live under certain laws, and be governed by them; but what particular form of government each nation would live under, and what persons would be entrusted with the magistracy, without doubt, was left to the choice of each nation."

Institution of magistracy *jure divino*.

The choice of government in the community.

It is as far from being a modern discovery, as it is from being a false position, that all civil or political power is derived from the people. So Sir John Fortescue said many centuries ago. † "As in the natural body (according to the philosopher) the heart is the first thing, which lives, having in it the blood, which it transmits to all the other members, thereby imparting life and growth and vigour; so, in the body politic, the first thing, which lives and moves in the intention of the people, having in it the blood, that is,

† Fortesc. de L. L. Angliz, c. xiii. c. 22.

the

the *prudential* care and provision for the public good, which it transmits and communicates to the head, as the principal part, and to all the rest, of the members of the said body politic, whereby it subsists and is invigorated. And as the head of the body natural cannot change its nerves or sinews, cannot deny to the several parts their proper energy, their due proportion and aliment of blood; neither can a king, who is the head of the body politic, change the laws thereof, nor take from the people what is theirs by right, against their consents, Thus you have, Sir! the formal institution of every political kingdom, from whence you may guess at the power, which a king may exercise with respect to the laws and the subject: for he is appointed to protect his subjects in their lives, properties and laws; for this very end and purpose, he has the delegation of power from the people; and he has no just claim to any other power but this." These fundamental principles of government were not then first discovered by modern theorists, who would aim at the abolition of all kingly power; but they were inculcated between three and four hundred years ago by a sage and learned chancellor of England, into the heir apparent to the crown, at a time, when the

All power delegated from the people.

the slightest deviation from the straight line of constitutional polity would, in the judgment of a Fortescue, have more effectually weakened the throne, than the most desperate and inhuman efforts of the different competitors for the crown, who were actually then deluging the nation with blood, and overwhelming it with wretchedness. This fundamental principle of general government has been so unexceptionably admitted by persons of every description, that it seems to have been received as a political axiom. † “ By the law of nature God hath ordained, that there should be political government unto one or more, according to particular forms thereof, as *monarchy, aristocracy, democracy, or mixt*; wherein is to be noted, that the ordination of God, by the law of nature, doth give political *power* unto the *multitude immediately*, and by *them* mediately to one or more.”

As essential as society is to the physical state or condition of man, so essential is sovereignty or government to society. § “ People, if they would engage the protection of the whole body, and join their force in enterprizes and undertakings calculated for the common good, must voluntarily resign some

Sovereignty or government as essential to society as society is to mankind.

† Parson's Answer to Sir Edward Coke, c. ii. p. 26.

§ Prickley upon Government, p. 6.



part of their natural liberty, and submit their conduct to the direction of the community ; for without these concessions, such an alliance, attended with such advantages, could not be formed." The weight of authority, for this fundamental principle of government, *all power is from the people*, is almost unexceptionable: the few, who have at any time questioned or denied it, have either misconceived it themselves, or in the heat of great contention, have obstinately refused to submit even to the truth of their antagonists. Like other truths, this has frequently met with opposition and resistance from the attempts of the ignorant to misrepresent, and the wicked to abuse it.

When I lament the pliancy, with which many of my well meaning countrymen are seduced by the sophisticated arts and malice of some few, I feel at the same time a satisfaction at their disposition to seek the truth, which inspires me with an uncommon ardour to set it before them in so clear a light, that they shall not shut their eyes against it.

† "*Nec tam pertinaces fore arbitror, ut clarissi-*

‡ Lactantius.—If to my more informed readers I appear guilty of pleonasm, I beg to be understood to have written this work with a view to point out the true road to those, that are ignorant, or have been misled.

*num solum, sanis atque patentibus oculis videre se nequent."*

\* " That sociability in mankind, or inclination to live in company, is by nature, and consequently ordained by God, for the common benefit of all, is an easy thing to prove ; seeing that all ground of realms and commonwealths dependeth of this point, as of their first principle ; for that a commonwealth is nothing else, but the good government of a multitude gathered together, to live in one ; and therefore all old philosophers, law-makers, and wise-men, that have treated of government or common-wealths ; as Plato in his ten most excellent books, which he wrote of this matter, intituling them, *Of the Commonwealths* ; and Marcus Cicero, that famous counsellor, in other six books, that he writ of the same matter, under the same title ; and Aristotle, that, perhaps, excelleth them both, in eight books, which he called his *Politiques*: all these, I say, do make their entrance to treat of the common-wealth affairs, from this first principle, to wit, *That man by nature is sociable, and inclined to live in company.*

" These two points then are of nature ;

Government is  
of nature.

\* Dolman's Conference about the next Succession to the Crown of England, first printed in 1594, and reprinted in 1681.

to

to wit, the common-wealth and government of the same by magistrates ; but what kind of government each common-wealth will have, whether democratia, which is popular government by the people itself, as Athens, Thebes, and many other cities of Greece had in old time, and as the Cantons or Switzers at this day have ; or else aristocratia, which is the government of some certain chosen number of the best ; as the Romans many years were governed by consuls and senators, and at this day the States of this country of Holland do imitate the same ; or else monarchia, which is the regiment of one, and this again either of an emperor, king, duke, earl, or the like: these particular forms of government, I say, are not determined by God or nature, as the other two points before ; for then they should be all one in all nations as the others are, seeing God and nature are one to all (as often hath been said) but these particular forms are left unto every nation or country to chuse that form of government, which they shall like best, and think most fit for the natures and conditions of their people, which Aristotle proveth throughout all the second and fourth books of his Politiques, very largely laying down divers kinds of governments in his days, as namely, in Greece, that of the Milesians, Lacedemonians, Candians,

The particular form of government is at the option of each society.

Candians, and others, and shewing the causes of their differences, which he attributes to the diversity of men's natures, customs, educations, and other such causes, that made them make choice of such or such forms of government.

“ So as of all this there can be no doubt, but that the common-wealth hath power to chuse their own fashion of government, as also to change the same upon reasonable causes, as we see they have done in all times and countries ; and God, no doubt, approveth what the realm determineth in this point ; for otherwise nothing could be certain, for that of these changes doth depend all that hath succeeded since.—In like manner is it evident, that as the common-wealth hath this authority to chuse and change her government, so hath she also to limit the same with what laws and conditions she pleaseth, whereof ensueth the great diversity of authority and power, which each one of the former government hath.

“ So as when men talk of a natural prince, or natural successors, (as many times I have heard the word used) if it be understood of one, that is born within the same realm or country, and so of our own natural blood, it hath some sense, though he may be both good or bad

The true sense of a natural prince.

bad (and none hath been worse, or more cruel, many times, than home born princes): but if it be meant, as though any prince had his particular government or interest to succeed *by institution of nature*, it is ridiculous, for that nature giveth it not, as hath been declared, but the particular constitution of every commonwealth within itself; and so much for this first point, which must be the ground to all the rest, that I have to say."

\* "Particular kinds of government are by the rights of nations, not by the law of nature; for it depends upon the consent of the people to set over themselves a king, consuls, or other magistrates."—The received opinion of the temporal sovereignty of the court of Rome is, that it is a most absolute monarchy. And the characteristic spirit of the late society of Jesuits was always supposed to be their absolute and even blind obedience to their superiors. Unless therefore, the glare of truth had been overpowering indeed, Bellarmine, who was admitted by all persons to have been a very learned man, and by his enemies was accused of being a very artful, intriguing, and ambitious man, as a Jesuit would not have broached doctrines, that would have counteracted the credit and esta-

Bellarmino's  
opinion forced  
from the glare  
of truth.

1. \* Bellarmine de Laicis, l. 3. c. 6.

blishment of his own order in different kingdoms ; or as a cardinal, under the possibility, or even expectancy of the tiara, would not have armed subjects with such powerful weapons of freedom, self-defence, and resistance against absolute monarchy. The application of these general and fundamental principles of government to the English constitution my plan will lead me hereafter to consider.

† “ Civil government (as I have before observed) is an institution of human prudence for guarding our persons, our property, and our name, against invasion ; and for securing to the members of a community that liberty, to which all have an equal right, as far as they do not by any overt act, use it to injure the liberty of others. Civil laws are regulations agreed upon by the community for gaining these ends ; and civil magistrates are officers appointed by the community for executing these laws. Obedience, therefore, to the laws and to magistrates, is a necessary expression of our regard to the community. Without it a community must fall into a state of anarchy, that will destroy those rights, and subvert that liberty, which it is the end of government to protect.”

The advantage  
of civil govern-  
ment.

† Dr. Price's Discourse, delivered on the 4th Nov. 1789, p. 20, 21.

The intended abuse of true principles may have produced the opposite effect.

Intended malice sometimes confers an unintended benefit. So the malicious application of the general principles of government by some modern authors, may, by bringing on a thorough and impartial investigation of them, have removed the probability of their abuse being in future productive of any serious mischief to the state. Truth courts investigation, and lives by discussion. Upon this principle Dr. Price is very emphatic in recommending free discussion. † “In short, we may, in this instance, learn our duty from the conduct of the oppressors of the world. They know, that light is hostile to them, and therefore they labour to keep men in the dark. Remove the darkness, in which they invelope the world, and their usurpations will be exposed, their power will be subverted, and the world emancipated.” Every one will not perhaps agree with Dr. Price, that the whole world is enslaved, and that it therefore wants emancipation; yet no one certainly can differ from him in maintaining, that the cause of truth will be better supported and maintained by the publication, than the suppression of its principles. This motive encourages me in my progress.

Truth better supported by publishing than suppressing its principles.

The substantial ground of difference be-

† Dr. Price's Discourse, delivered on the 4th Nov. 1789, p. 14, 15.

tween the dissenting parties, appears to me to arise in great measure from the generality of the propositions, about which they differ.

\* “ In a subject, where truth and error lie so near to each other, divided by a line in many cases not to be discerned without care and attention, and where preengagements of interest to one side or the other are apt to bend and corrupt the judgment, it is no wonder to find great perplexity in men’s notions and disputes, or that those, who lie in wait to deceive or embroil mankind, should choose a field of controversy, in which there is such room for all the arts of sophistry. While they keep in generalities, (as such disputants always do) some truth will be in their assertions, for the sake of which they cannot absolutely be denied. To this they retreat for cover whenever they are pressed. By a little aggravation of the conclusions they oppose, they can easily represent them as excesses, with popular topics for declamation and invective. While the minds of men are thus amused with generalities, and by artificial terrors of one extreme driven towards the other, the real point of truth is easily kept out of sight, and the dispute between liberty and authority

The danger of arguing upon extreme propositions.

\* Dr. Rogers’s *Vindication of the Civil Establishment of Religion*, printed in 1728, p. 2 and 3.

E

may



may on these terms be carried on for ever ; but if we can fix the proper limits of each, we shall soon make them friends, and put an end to all confusion about them."

How certain propositions commonly supposed contradictory are reconcilable.

It is much to be lamented, that most of the writers upon these political subjects have set out, and continued through their whole career, upon the treacherous *extremities* of their respective doctrines. Under this excessive tension, the different partizans view their antagonists in the lowest degree of depravity, and represent them in the grossest terms of degradation. Thus this political maxim, *salus populi suprema lex*, "the welfare of the people is the first of all laws," is opposed by one party to another maxim, *omnis potestas a Deo*, "all power is from God;" and the abettors of each, from misconceiving or misapplying them, run into the opposite extremes, of attributing to individuals a *jure divino* indefeasible right to power, and of denying the existence of any monarchical right or power upon earth. Whereas if these two principles are but fairly represented, and rightly understood, they are not only consistent with each other, but one essentially flows from the other; for as I have before observed, society is essential to the physical nature of man; and power and govern-  
ment

ment are essential to the subsistence of society; these, therefore, like our existence, proceed immediately from God. In this general and original sense of power, no one, I apprehend, will deny that the existence of all temporal or civil power proceeds from God; and in this sense I may cite the authority of the Apostle; *There is no power but of God*, and avail myself of the deduction, which Milton and others draw from it, *that the institution of magistracy is jure divino*. But as our benevolent Creator has constituted us free agents in this world, so *what particular form of government each nation should live under, and what persons should be entrusted with the magistracy, without doubt, was left to the choice of each nation*. But still each particular form of government, adopted by different societies or nations, must all tend ultimately to one and the same end.

\* “ The great end of men’s entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power; as

\* Locke on Civil Government, c. xi. p. 294.

Sovereignty of  
power necessary  
for the preservation  
of the society.

the first and fundamental natural law, which is to govern even the legislative itself, is the preservation of the society, and (as far as will consist with the public good) of every person in it. This legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it; nor can any edict of any body else, in what form soever conceived, or by what power soever backed, have the force and obligation of a law, which has not its sanction from that legislative, which the public has chosen and appointed. For without this, the law could not have that, which is absolutely necessary to its being a law, consent of the society, over whom nobody can have a power to make laws, but by their own consent, and by authority received from them; and therefore all the obedience, which by the most solemn ties, any one can be obliged to pay, ultimately terminates in this supreme power and is directed by those laws, which it enacts; nor can any oaths to any foreign power whatsoever, or any domestic subordinate power discharge any member of the society from his obedience to the legislative, acting pursuant to their trust, nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being  
ridiculous

ridiculous to imagine one can be tied ultimately to obey any power in the society, which is not the supreme."

Inattention to what, in fact, constitutes the supreme power in the society, has been the fatal cause of all rebellions, that have ever been raised against lawful governments. The cry of the *rights of the people* is the hackneyed warhoop, by which both ancient and modern traitors have excited and fomented disturbances in all states. \* "A term (the people) which they are far from accurately defining, but by which, from many circumstances, 'tis plain enough they mean their own faction, if they should grow by early arming, by treachery or violence, into the prevailing force." The rights of the people are the most sacred rights, that can be claimed, and ought to be the most religiously preserved; but they are also liable to the most serious and alarming abuses, *corruptio optimi pessima*. Our own history fatally superabounds with tragical abuses of these most precious rights; and the frequent abuses of them have forced from one of the greatest ornaments of the age, an opinion, perhaps more loyal in its tendency, than

Inattention to what is the supreme power usual cause of rebellion.

\* Appeal from the New to the Old Whigs, p. 56, 57.

Instances of true  
principles being  
misappre-  
hended.

tenable upon principle. \* " These doctrines concerning the people tend, in my opinion, to the utter subversion, not only of all government, in all modes, and to all stable securities to rational freedom, but to all the rules and principles of morality itself." The first of these doctrines, upon which this opinion is hazarded, rests on this position: † " That the sovereignty, whether exercised by one or many, did not only originate from the people, but that in the people the same sovereignty constantly and unalienably resides." Though this doctrine has been sometimes abused to the grossest purposes, yet it certainly forms the first, and consequently the true, principle of political and civil government, which the high authorities I have adduced, and the reasoning I have formed upon them, have, I trust, satisfactorily established.

Greater degree  
of power to  
alter an old than  
to form a new  
government.

In matters of such immense importance, I do not hold myself warrantable in passing lightly from one subject to another, without submitting to my readers what my judgment suggests to me as conclusive upon the whole. It requires, in fact, a greater degree of power, or sovereignty, to change, alter, and new-

\* Appeal from the New to the Old Whigs, p. 57.

† Ibidem, p. 56.

model an old government, than to settle and establish a new one; for in the change and alteration of every old government, it becomes necessary to exchange, curtail, or annihilate many privileges, advantages, and rights, which had been possessed, enjoyed, and exercised by individuals, as well as to imagine, constitute, and dispose of new privileges, advantages, and rights, which alone is the case in the formation of every new political establishment. When, therefore, it is said, that society and government are of nature, it is meant, that God has so formed and constituted men, that they cannot physically exist without society, nor society continue to subsist without government; and, therefore, necessarily, society and government must be of equal duration with human nature itself. And when it is asserted, that particular forms of government are by the right of nations, *singula species regiminis sunt de jure gentium*, it is not meant nor supposed, that we are annexing to societies a mere theoretical quality, which can never be reduced to action, nor even that we are giving to societies a power, which, by its actual execution, like the charge of a musquet, goes off in an explosion, and evaporates into a nonentity; but we are attributing to a community or voluntary collection of free agents,

agents, that fundamental principle and essential quality, without which they must necessarily lose the attributes of socialness and freedom, and to whom the continuance of the right to exercise the power is as necessary to preserve them *social and free*, as was the first investiture of the power to make them so.

\* “*Cujus est instituere, ejus est abrogare.* We say in general, he that institutes may also abrogate, most especially when the institution is not only by, but for himself. If the multitude, therefore, do institute, the multitude may abrogate; and they themselves, or those, who succeed in the same right, can only be fit judges of the performance of the ends of the institution.”

† “And this might be proved also by infinite other examples, both of times past and present, and in all nations and countries, both Christian and otherwise, which have not had only different fashions of governments the one from the other, but even among themselves, at one time, one form of government; and another at other times.

“England also was first a monarchy under Britons; and then a province under the Ro-

Examples of  
the communi-  
ty's changing  
the govern-  
ment.

\* Algernon Sydney's Discourses concerning Government, p. 15.

† Dolman's Conference touching Succession, p. 8, 9.

mans;

mans; and after that divided into seven kingdoms at once, under the Saxons; and now a monarchy again under the English; and all this by God's permission and approbation, who in token thereof suffered his own peculiar people also of Israel to be under divers manners of governments in divers times; as first, under patriarchs, Abraham, Isaac, and Jacob; then under captains, as Moses, Joshua, and the like; then under judges, as *Othniel*, *Aiod*, and *Gideon*; then under high priests, as Hely and Samuel; then under kings, as Saul, David, and the rest; and then under captains and high priests again, as *Zorobabel*, *Judas Machabæus*, and his brethren, until the government was lastly taken from them, and they brought under the power of the Romans, and foreign kings appointed by them. So as of all this there can be no doubt, but that the commonwealth hath power to chuse their own fashion of government, as also to change the same upon reasonable causes, as we see they have done in all times and countries; and God no doubt approveth what the realm determineth in this point; for otherwise nothing could be certain, for that of these changes doth depend all that hath succeeded thence. In like manner is it evident, that as the commonwealth hath this authority



erty to chuse and change her government, so hath she also to limit the same with what laws and conditions she pleaseth; whereof ensueth the great diversity of authority and power, which each one of the former governments hath."

In the supreme power of the legislature consists the preservation of the community.

It is to this sovereignty or supreme power of legislating, that is, of making and establishing, and of altering, changing, and new-modelling the government, which constantly and unalienably resides in the people, or in the community, that Mr. Locke attributes the security and actual preservation of all our civil and political rights and liberties. \* " Though the legislative, whether placed in one or more, whether it be always in being, or only by intervals, though it be the supreme power in every commonwealth, yet it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the Society given up to that person or assembly, which is legislator, it can be no more, than those persons had in a state of nature, before they entered into society, and gave up to the community. For nobody can transfer to another more power,

\* Locke of Civil Government, p. 305.

than

than he has in himself; and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of nature, no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him, for the preservation of himself and the rest of mankind, this is all he doth or can give up to the commonwealth, and by it to the legislative power; so that the legislative can have no more than this. Their power, in the utmost bounds of it, is limited to the public good of the society; it is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects. The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them, to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others. The rules, that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of nature, *i. e.* to the will

will of God, of which that is a declaration; and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it.\*

I am fearful of fatiguing my readers with quotations: I have before given a reason for citing them, and I feel an encreasing anxiety to avoid the imputation of withholding the light from the subject under consideration. I neither forget nor slight the exhortation of Dr. Price: *Enlighten them and you will elevate them.*

The first principles of government uncontroversial.

\* “ Though the schoolmen were corrupt, they were neither stupid or unlearned; they could not but see that, which all men saw, nor lay more approved foundations, than that man is naturally free; that he cannot justly be deprived of that liberty without cause; and that he doth not resign it, or any part of it, unless it be in consideration of a greater good, which he proposes to himself.” So uncontroversial and true did the principles, which I have laid down upon this subject, appear to the same author, that, speaking in the very next page, of Sir Robert Filmer, his great tory antagonist, he says, “ This,

\* Algernon Sidney's Discourses concerning Government, sec. ii. p. 5.

which

which hath its root in common sense, not being to be overthrown by reason, he spares his pains of seeking any; but thinks it enough to render his doctrine plausible to his own party, by joining the jesuits of Geneva, and coupling Buchanan to Doleman, as both maintaining the same doctrine; though he might as well have joined the puritans with the Turks, because they all think that one and one makes two."—I have now endeavoured to shew clearly, that society and government were constituted by God: but that the particular form of each government was left by him to the free option of the community, which was to be ruled by it. \* "Upon the same grounds we may conclude, that no privilege is peculiarly annexed to any form of government; but that all magistrates are equally the ministers of God, who perform the work for which they were instituted." And, "This shews the work of all magistrates to be always and every where the same, even the doing of justice, and procuring the welfare of those, that created them. This we learn from common sense: *Plato, Aristotle, Cicero*, and the best human authors, lay it as an immoveable foundation, upon which they

All lawful magistrates the ministers of God.

Algermon Sydney's Discourses concerning Government, p. 55.

build.

## *Of the State of Society.*

build their arguments relating to matters of that nature; and the apostle, from better authority, declares, *That rulers are not a terror to good works, but to evil: wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same; for he is the minister of God unto thee for good; but if thou do that which is evil, be afraid, for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil.* And the reason he gives for praying for kings and all that are in authority, is, *that we may live a quiet and peaceable life, in all godliness and honesty."*

I have hitherto considered only the right, which each community essentially retains of forming and modelling the government, to which it chuses to subject itself. I will now proceed to examine more minutely, upon what this right is founded.

\* "Because no one of them is obliged to enter into the society, that the rest may constitute, he cannot enjoy the benefit of that society, unless he enter into it. He may be gone, and set up for himself, or set up another with such, as will agree with him; but if he enter into the society, he is obliged by

\* Algernon Sydney's Discourses concerning Government, p. 80, 81.

the laws of it; and if one those laws be, that all things should be determined by the plurality of voices, his assent is afterwards comprehended in all the resolutions of that plurality. In the like manner, when a number of men met together to build Rome, any man who had disliked the design, might justly have refused to join in it; but when he had entered into the society, he could not by his vote invalidate the acts of the whole, nor destroy the rights of *Romulus*, *Numa*, and the others, who by the senate and people were made kings; nor those of the other magistrates, who, after their expulsion, were legally created.

Remaining a member of society induces an obligation of submitting to its laws.

“This is as much, as is required to establish the natural liberty of mankind in its utmost extent; for till the commonwealth be established, no multitude can be seditious, because they are not subject to any human law; and sedition implies an unjust and disorderly opposition of that power, which is legally established; which cannot be when there is none, nor by him who is not a member of the society, that makes it; and when it is made, such as entered into it are obliged to the laws of it.”

The true and real basis then of the civil or political power or sovereignty, which exists

Of the original compact of society.

ists in each state, is the original agreement, compact or contract of the society or community, which forms that state, to depute and delegate the rights, which were in them individually in the state of nature, to those, whose duty it should become, to rule, protect, and preserve the community. For in this consists the whole duty both of the supreme and subordinate magistracy. It would be nugatory to question the reality of this original contract,\* because the particular time and place, when and where it was entered into, cannot be named, nor the written charter or document, in which it is expressed, be produced for the satisfaction and benefit of all future generations. † “The chief question is not, whether there was ever such a contract formally and actually made; but whether mankind had not a right to make it: for if they had, civil government, in the ordinary course of things, could be rightfully founded upon nothing else, but this, or what is equivalent to it, *a tacit consent of the governed*. And since the latter must be of the same effect with *the other*, this may be sufficient for our present purpose, unless persons

\* Vid Hoadley's Defence of Hooker's Judgment, p. 158. & seq.

† Idem. p. 168.

think fit to call also for the *original draught* of a *tacit consent*." The actual assemblage of the multitude forming themselves into a particular society, was the formal ratification of this original contract, though it were done by tacit consent; and by this each individual of our ancestors became bounden to the power of the whole community, or, in other words, to the sovereignty of the state. The free continuance of each of their successors in the community is the bond, by which they become more solemnly and firmly obligated to the contract, by grounding their tacit consent upon the valuable considerations and daily encreasing advantages, of the experience and improvements of their predecessors. This is a multiplying principle, that acquires vigour from every incident of human life; as each revolving day brings with it fresh reasons and motives, why the living members of the community should ratify and confirm the original contract entered into by their deceased ancestors. The perpetuation therefore of the community, is the unceasing renovation and confirmation of the original contract, in which it was founded.

The thorough consideration, and proper application of this principle, will demonstrate the folly and falsity of some newly broached

F

doctrines

Futility of some  
modern doc-  
trines.



doctrines, which modern sophists pretend to establish as the necessary consequences of the true principles of government, which are denied by none.

\* “ There never did, there never will, and there never can exist a parliament, nor any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controuling posterity to the end of time, or of commanding for ever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts, or declarations, by which the makers of them attempt to do, what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void.

“ When man ceases to be, his power and his wants cease with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing, who shall be its governors, or how its government shall be organized, or how administered.

“ Those, who have quitted the world, and those, who are not yet arrived at it, are as remote from each other, as the utmost stretch of mortal imagination can conceive; what

\* Payne's Rights of Man, p. 9, 10, 11.

possible obligation, then, can exist between them, what rule or principle can be laid down, that two nonentities, the one out of existence, and the other not in, and who never can meet in this world, that the one should controul the other to the end of time."

Who does not see, at the very first view of such doctrines, that, in order to give them effect, a new legislation must be provided for the birth of each individual, if the former legislation ceases by the deaths of the legislating individuals, who framed it? For if we consider the real physical state of mankind, we shall find that the same hour, which terminates the existence of one, gives birth to another individual; there consequently cannot be one given instant of time, in which government can be said to cease by the demise of one, and revive by the birth of another. I shall hereafter have occasion to go more deeply into this doctrine, by considering the effects, which the laws, enacted many hundred years ago by our ancestors, still continue to produce upon their posterity to this day.

In attempting to establish the full force and energy of the power and authority of magistrates in the state of society, I by no means derogate thereby from the perfection of true

The rights of  
each commu-  
nity are rela-  
tive.

liberty in the individuals of the community, who are subject to such power or authority. For far be it from me to deny to any man the full, free, and uncontrouled power of thinking and acting for himself, in every thing, which affects not the rights of the community; for such rights only does the community possess, as the individual no longer retains; the transfer of them from the one, has vested them in the other; they cannot subsist in both. Thus the rights of each community are relative only, and bind such, as by living under her protection, and remaining members of her society, continue subject to the power, which they have so delegated to her; and which, whilst the community subsists, they can neither totally nor partially recall. The liberty or right of locomotion never was transferred from the individual; and therefore the state cannot, without some special reason, prevent the emigration of her members. Every man is at liberty to withdraw himself from any particular society; but he is not free to disturb, overturn, or destroy the government of that society, of which he is a member. For the subjection of each individual of the community to the sovereignty or political power of the whole, is that essential quality, which distinguishes the  
state

state of civil society from the state of pure nature and primeval equality, which must ever necessarily produce anarchy and confusion; for the prevention of which, and for attaining the happiness of the people, the community institutes a government, and entrusts their sovereign power with governors.

If any thing can give force, vigour, and energy to the power of magistrates over the members of a community, it is, because the community itself has vested it in trust in some of its own body. Therefore, \* “there is undoubtedly a particular deference and homage due to civil magistrates, on account of their stations and offices; nor can that man be either truly wise or truly virtuous, who despises governments, and wantonly *speaks* evil of his rulers, or who does not, by all the means in his power, endeavour to strengthen their hands, and to give weight to their exertions in the discharge of their duty. *Fear God*, says St. Peter. *Love the brotherhood. Honour all men. Honour the king.* You must needs, says St. Paul, *be subject to rulers, not only for wrath* (that is, from the fear of suffering the penalties annexed to the breach of the laws), *but for conscience sake. For rulers*

Magistrates are trustees of the community.

\* Dr. Price's Discourse on the 4th Nov. 1789, p. 27.

This delegated power adequate to all the purposes of the most efficient government.

*are ministers of God, and revengers for executing wrath on all that do evil."* In a word, without troubling my readers with any more authorities for establishing these clear positions, that the power, both of the supreme and subordinate magistrates, is delegated to them by the people, is holden by them in trust for the people, and can only be exercised by them, according to the nature, conditions, and extent of the trust, I shall conclude this subject by shewing, from two of the strongest assertors of civil liberty, that upon these principles the power of the supreme magistrate is so constituted in a kingdom, that it becomes fully adequate to all the purposes of the most efficient monarchy. \* "In the 8th Book, p. 444, he gives it as his judgment, that all kings, but such as are immediately named by God himself have their power by *human right* only; though after human composition and agreement, their lawful choice is approved of God, and obedience required to them, by *divine right*." What more than this can be required by the staunchest devotee to kingly power? The right of the sovereign to command, is one and the same thing, as the obligation of the subject to obey; beyond the

\* Hoadley's Defence of Mr. Hooker's Judgment.

establishment of these two points, I do not conceive how, in a political society, the substance of sovereignty can be extended; for I will not suppose even one of my readers to entertain a serious idea of a pure regal or arbitrary government on the one hand, or of an absolutely equalized anarchy on the other. There is always much delicacy, and often much danger, in arguing upon the extremes of any proposition.

\* “ From the foregoing reasoning then the conclusion is evident; that if any one or any number of individuals, set up his or their wills in opposition to the will of the legislator, he or they are guilty of the greatest of all crimes they can possibly commit; because it is a crime, which dissolves, at once, the whole cement of society, and snaps asunder by violence all the bonds of government, which tend to secure the whole peace and tranquillity; for opposition to the will of the legislator tends to drive them back to that miserable state of nature, from which they gladly fled to government, as to a refuge and an asylum.”

To rise up against the legislature, the greatest of all civil crimes.

The right order of reasoning would here

\* Cooper's first Principles of Civil and Ecclesiastical Government, p. 78.

direct me to investigate and discuss the variety and nature of different political establishments, by which communities have carried into execution their inherent rights of modelling their own forms of government. But my intention is not to lay before the public a full and elaborate essay upon government, but to submit to the consideration and judgment of my countrymen, such principles, grounds, and reasons, as will evince the political necessity of submitting to, and supporting our present constitutional establishment, and of counteracting the wishes, efforts, and attempts of our secret and open enemies to discredit, weaken, and subvert it.

I have before said, and I again repeat, that our constitution is founded upon the *Rights of Man*. I have attempted to trace their nature and origin, as well as our right to exercise them; it remains for me to consider, how we are affected by the actual execution or exercise of these rights in our own community, which brings me to the consideration of the constitution and government of Great Britain.

## C H A P. III.

## OF THE GENERAL CONSTITUTION AND GOVERNMENT OF GREAT BRITAIN.

**A**FTER the adoption of the principles, which I have already endeavoured to establish, it would evidently exceed the intent and purport of this publication, to enter into historical researches, in order to trace the antiquity, and delineate the gradual and progressive improvements of our constitution; for it is not to be supposed, that the community of this island passed, *uno saltu*, from their first agreement to enter into society, immediately into a constitution and government of that perfection, which distinguishes the constitution and government, that we now happily enjoy. Could we even clear the dark pages of those remote histories from doubt and uncertainty, the information might gratify the curiosity of the mind, but would bring no conviction to the understanding. *Principle* alone is the true compass, by which we can steer steadily and safely through the treacherous perils of this sea of politics.

Our constitution founded upon principle.

If



If any of my countrymen have been deluded, by these modern pseudo-evangelists, into their practical lessons, \* “to consider the world as new to them, as to the first man, that existed, and their natural rights in it of the same kind; † that there is no political Adam, who has a power or right to bind all posterity for ever; ‡ that the rights of the living cannot be willed away, and controuled, and contracted for by the manuscript assumed authority of the dead, there being no authority in the dead over the freedom and rights of the living; and that, therefore, || we are not to refer to musty records and mouldy parchments for the rights of the living; and consequently, § that they are in error, who reason by precedent drawn from antiquity respecting the Rights of Man,” I shall certainly make little impresson upon them by the quotation of any written, historical, philosophical, or even legislative authority whatever. I must, however, in justice, remind these docile disciples of modern liberty of the lenient palliative, which their demagogue has thrown into his instructions, lest they may swallow the envenomed

\* Payne's Rights of Man, p. 46.

† p. 13.

‡ p. 10.

§ p. 15.

¶ p. 44.

draught too hastily, without the application of the corrective solvent. \* “ It requires but a very small glance of thought to perceive, that although laws made in one generation often continue in force through succeeding generations, yet that they continue to derive their force from the consent of the living. A law not repealed continues in force, not because it cannot be repealed, but because it is not repealed, and the non-repealing passes for consent.” These written authorities, or, in the fashionable phrase, *these assumed usurpations of the dead over the living*, may be referred to by those, who will derive from them the satisfaction of example, illustration, and reason.

What gives binding effect to laws.

In order to humour these neophytes to modern liberty, I shall follow and argue upon their own avowed principles and doctrines; and I certainly so far go with them, that I do not admit, that the truth of any principle can be proved merely from its antiquity, or that every right can be established merely by its length of possession. † “ For as time can make nothing lawful or just, that is not so of itself (though men are unwilling to change

The truth of principles not to be proved from its antiquity.

\* Payne's Rights of Man, p. 13.

† Algernon Sydney's Discourses concerning Government, 380.

that

that, which has pleased their ancestors, unless they discover great inconveniencies in it) that, which a people does rightly establish for their own good, is of as much force the first day, as continuance can ever give to it; and therefore, in matters of the greatest importance, wise and good men do not so much enquire, what has been, as what is good, and ought to be; for that, which of itself is evil, by continuance is made worse, and upon the first opportunity is justly to be abolished." Without, therefore, attempting to trace the origin, progress, and establishment of our constitution and government, through the intricate mazes of historical darkness, confusion, and uncertainty, I shall keep constantly in view the principles of civil liberty, which I have already laid down, and thereby endeavour to establish, in application to them, the force and energy of our present form of constitution and government.

The first delegation of power in this island by election.

It is because *the sovereignty of civil or political power originates from the people, and constantly and unalienably resides in the people*, that we find, from the earliest credible account of our ancestors, that the political community of this island first delegated their power to an individual, by the actual election of the representative body or common council of the nation :

nation: \* *Summa imperii bellicue administrandi communi concilio permissa est Cassivellano*. Upon this principle, and in exercise of the indefeasible right and power, upon which it is grounded, did our ancestors continue this form of elective monarchy, till they became a province under the Romans; the dissolution then of that government was effected, as Mr. Locke expresses, † “ by the inroad of a foreign force making a conquest upon them. For in that case, not being able to maintain and support themselves as one entire and independent body, the union belonging to that body, which consisted therein,, must necessarily cease.” ‡ In execution of the same

The government dissolved by force of arms.

\* *Cæsar's Commentaries*.

† Locke on Civil Government, c. xix. p. 227.

‡ No free exercise of a people's right can be supposed to exist under the compulsive controul of a foreign enemy. Thus Mr. Locke (*ibid*, p. 217), “ Though governments can originally have no other rise, than that before mentioned, nor politics be founded on any thing, but the consent of the people.; yet such have been the disorders ambition has filled the world with, that, in the noise of war, which makes so great a part of the history of mankind, this consent is little taken notice of; and therefore many have mistaken the force of arms for consent of the people, and reckon conquest as one of the originals of government. But conquest is as far from setting up any government, as demolishing a house is from building a new one in the place; indeed, it often makes way for a new frame of commonwealth, by destroying

Saxon Heptarchy.

Our monarchy, limited in its original creation.

General view of our government.

same rights and power, when they were left to themselves by their Roman conquerors, did they divide themselves into an heptarchy, or seven distinct kingdoms, under the Saxons ; and when they had experienced the inconveniences of these divergent sovereignties, they reconcentered the supremacy in one monarch, as it has ever since continued. In this same spirit, and in the exercise of these same rights, did the Saxon conquerors of our British ancestors, \* “ when they had subdued the Britons, chuse to themselves kings, and required an oath of them to submit to the judgment of the law, as much as any of their subjects.” So when the Saxons, as masters of the vanquished Britons, began to look upon themselves as the political community of this island, they † “ established a form of administration, which limited the prince, and required that public affairs should be settled by assemblies of the chief men of the nation. The privileges of the people were afterwards enlarged by the alterations, which the wise and virtuous Alfred introduced ; and this confir-

stroying the former ; but, without the consent of the people, can never erect a new one.”

\* Mirror of Justice, c. i. sect. 2.

† Dr. Kippis' Sermon, preached at the Old Jury, on the 4th Nov. 1788, p. 14.

mation.

mation of the mode of trial by juries was one of the noblest advantages ever conferred on human society. Nor did the Norman conquest destroy our constitution, though it hindered its operation for a time, and gave occasion to the exercise of much tyranny. On the contrary, the English laws gradually recovered their vigour, and became the basis of the charter of Henry the First; of the celebrated Magna Charta, in the reign of King John; and of other charters. How strong a sense Englishmen had of their legal right to liberty, is manifest from the numerous instances, in which they demanded, that the great charter should be solemnly confirmed. Even the feudal policy, however defective it may be justly esteemed, compared with the benefits we now enjoy, was formed on the principles of freedom, with respect to those persons, who were possessed of landed property. There was, likewise, in that system, a spirit of improvement; so that it gradually gave way, and naturally brought in a better state of things, as society advanced towards perfection." In short, to the exercise of these indefeasible rights of the community is to be attributed every legal alteration or improvement of the constitution and government of  
this

this kingdom, since the establishment of the English monarchy, in the person of king Egbert, to the present reign of his majesty King George the Third ; the particulars of which we shall proceed to consider.

## C H A P. IV.

## OF THE CIVIL ESTABLISHMENT OF RELIGION.

I HAVE already observed, that one of the natural rights, which each individual retains, even independently of the society, of which he is a member, is the uninterrupted communication and intercourse of the soul with its Creator; and Mr. Payne says, that *amongst the natural rights, which he retains, are all the intellectual rights, or rights of the mind; consequently religion is one of those rights.*

Choice of our religion an indefeasible natural right.

We need not recur to schoolmen to understand or admit this universal maxim of religion, that our dependence upon our Creator binds us indispensably to a grateful acknowledgment of our existence, and a sincere and unreserved tender of our minds and hearts, to think and act as he shall require; for I conclude with all those, who are neither atheists nor deists, that the light and grace, which Almighty God communicates to his creatures, in consequence of this offering, are personally binding upon the individual, to whom they are communicated, and consequently cannot be controuled by other

G

human



The duty of individuals to follow the inspirations of God.

human beings collectively or individually, who stand in the same predicament of exclusive responsibility to their Creator. The right, therefore, which each individual possesses of this free and uninterrupted communication and intercourse with his Creator, is essentially paramount to all human, civil, or political power whatever.

† “Religion, gentlemen, appears to me to be a gift, which God bestows on every individual, subject to his movements and inspirations, but in every other respect entirely free, and beyond the reach of any human jurisdiction; therefore, no one ought to associate against his will, or without some reasonable cause or motive, with any religious society whatever.” And the great Fenelon, archbishop of Cambray, a prelate of the established religion in a Roman Catholic country under an absolute monarchy, speaks the same language. § “Liberty of thought is an impregnable fortress, which no human power can force; therefore, kings should not take upon themselves to direct in matters of religion.”

Liberty of thought in religious matters not subject to civil controul.

† Professor Noodt's Discourse upon Liberty of Conscience, as translated by A. Macawlay, p. 27.

§ Fenelon, as quoted by Dr. Rogers, Vindication of the Civil Establishment of Religion:

Every

Every individual human being has not only a right, but is under an indispensable obligation to adopt that religious cult or mode of worship, which, after due deliberation, in the sincerity of his heart, he thinks his Creator requires of him; it follows of course, that a society composed of such individuals must, collectively taken, enjoy the same right, and be under the same duty and obligation. As, therefore, it is neither my intention nor purpose to examine, or even consider the reasons, grounds, or merits of the religious persuasion of any one individual, so shall I equally avoid the discussion or examination of the internal evidence of that religion, which the majority of this community has thought proper to countenance and support by civil sanctions. The civil establishment of a religion affects in no manner the truth or falsehood of the religion itself. § “The magistrate (or supreme civil power) in Turkey has just the same uncontrouled civil right to establish the religion he approves, as a Christian magistrate has to establish his Choice: christianity made no alteration in this case; but left civil power as it found it; and if it was before the judge,

The rights and duties of the society the same as of individuals.

The civil establishment of religion affects not the truth of the religion itself.

§ Rogers's Vindication, p. 162.

what religion it should establish, it continues so still." And the same learned author, who is remarkable for perspicuity and strength of argument, further says; † "Nothing, therefore, can be more unjust or impertinent; than those suggestions, that upon my principles, Popery will be the true religion in Spain, Presbytery in Scotland, and Mahometism in Turkey. These are, indeed, the established religions in those places; but not one jot the more true for being established. To the laws establishing religion, civil obedience is due, in the same measures, and under the same reserves in Spain, as in England; but assent of judgment against private convictions is no part of the obligations arising from the establishment in either."

Changes in succession of the religion in this country.

Thus did our British ancestors adopt for some centuries the Druidical institutions; after that, they embraced the Christian religion, under king Lucius, which was preached to them by St. Damianus, sent hither from Rome for that purpose by St. Eleutherius; and when the Saxons conquered the island, a part of the community retired into the mountains of Wales, to preserve their liberties and religion from the innovations and en-

† Rogers's Vindication, p. 208.

croachments of their new masters. The Saxons, however, continued for many years to keep up the religious establishment in the community, which they had brought with them out of Germany. About four hundred years after the preaching of St. Damianus, the English Saxons, who then properly were the community or political society of this country, were converted to Christianity by St. Augustine and his fellow preachers, sent also for this purpose from Rome by St. Gregory the Great. From this time then, until the Reformation, the majority of this community adopted the Roman Catholic religion, and made it the established religion of the country.

When I speak of the adoption of religion either by one or more individuals, I wish ever to be understood to speak of it, as of the free act of a free agent. True it is, that our blessed Redeemer came upon earth to establish the Christian religion ; and his injunction to mankind to submit to and adopt it is mandatory and unexceptionable ; but then it is equally true, that the act of submission to, and adoption of it, must necessarily be the free and voluntary act of the individual. It was by preaching, that our blessed Lord himself and his apostles and their successors propa-  
gated

Christianity established and propagated by preaching, and the adoption of it free and voluntary.

gated and established the Christian religion ; the effects of preaching are persuasion and conviction ; and these essentially presuppose the freedom of the person to be persuaded and convinced. Persuasion and conviction formally exclude every idea of necessity and compulsion.

From the first formation of man to the present hour, the following saying of Dean Tucker was equally true : \* “ No human authority ought to compel man to surrender to any one his right of thinking and judging for himself in the affairs of religion, because this is a personal thing between God and his conscience, and he can neither be saved nor damned by proxy.”

Original constitutional connection of church and state.

The very earliest traces of our constitution bespeak its interwoven texture of church with state. Upon the avowed assumption, that religion generally promotes morality, our ancestors wisely determined, that a religious establishment should be sanctioned by the community, and the legal establishment of it should form an essential part of the English constitution. Now although government, as we have before seen, be essential to

\* Vid. Religious Intolerance no part of the general plan, either of the Mosaic or Christian Dispensation, by Jos. Tucker, D. D. Dean of Gloucester, 1774.

society, yet the particular form of government, which each particular society should adopt, was left to the free option of the society, and necessarily remains open to whatever changes or improvements the same society shall think proper, convenient, and necessary, from time to time to introduce. So although a religious establishment be essential to the English constitution, yet the particular form of that establishment must as necessarily remain open to the general sense and option of the community, as the freedom of each individual's intercourse and communication with his Creator must for ever remain perfectly uncontrouled. Without entering, therefore, into any polemical controversy or dispute about the particular tenets, doctrines, or principles of what once was, or what now is the religion sanctioned by the law of England, whatever my own religious opinion or belief may be, I am bound by principle to allow to my neighbour the same liberty and right of following the dictates of his conscience, which I claim to myself: and whatever that mode of worship may be, in the free and conscientious adoption of which the majority shall concur, the community hath the unimpeachable right of countenancing and supporting it by civil sanctions, or, in other words,

The right of a community to give civil sanction to whatever they concur in.

*Of the Civil Establishment of Religion.*

words, of making it the established religion of the country ; for the adoption of a particular church establishment by the state has precisely the same binding obligation upon the community, as the enacting any other civil regulation or ordinance whatsoever ; but  
 \* “ a religious establishment is no part of Christianity, it is only the means of inculcating it.”

The civil establishment of religion in a country cannot by possibility operate any effect upon the nature or truth of the religion itself ; thus the Presbyterian religion in England, where it has no civil establishment, is one and the same religion as it is in Scotland, where it is the established religion of the country. The Roman Catholic religion is one and the same, since it hath ceased to be the established religion of this country, as it was, whilst it was sanctioned and established by the law of the land. The effects of this civil sanction or establishment are necessarily of a mere civil nature ; thus are the ministers of the established religion supported, maintained, and dignified by the state ; they form a separate body from the laity ; are bound by

The effects of a civil establishment merely civil.

\* Paley's Moral and Political Philosophy, 2 vol. c. x. p. 303.

ordinances,

ordinances, regulations, and canons, to which the laity are not subject; in many instances they are made corporations, and are enabled to sue and be sued in their corporate capacity; and are entitled to many civil immunities, rights, liberties, and privileges in the state. Thus, says Dr. Rogers, a dignitary clergyman of the established religion, \* “ The church, or religious society established, remains the same religious society it was before, subsisting on the foundation it was first built on, with the same offices and administrations, the same social rules, and the same terms of union between the members. The establishment (*e. g.*) of that religious society we call the Church of England, does not alter that society in its nature or essentials, but is purely adventitious to it. It would remain the same Christian church, if the state should think fit to establish Mahometism. The commission and office of its pastors to all purely ecclesiastical effects the same, and the mutual duties arising from the relation between them and their flock the same. And if by the rules of Christian religion, an unnecessary departure from them be sinful, it will continue to be so, whatever

The civil establishment causes no alteration in the nature of the religion.

\* Rogers's Vindication, p. 209.



the civil power may determine about it. The establishment of any religion being purely a civil act, can have only civil effects. I have endeavoured to assign the proper limitations to the magistrate's power in matters of religion ; within those limitations, his laws concerning it have the same legal effects, and are attended with the same legal obligations, on himself and his subjects, that other civil laws have, within their proper extent. The general effect of an establishment, and from which all others arise, is, that the laws or rules of a religion, or of a church professing that religion, are thereby *incorporated*, or made a part of the laws of that civil community. All the power of legislation, which the magistrate has, is to make civil laws for that community. If he has any power to make laws with regard to religion, those laws must be civil laws, a part of the body of the civil laws of that community. Thus the thirty-nine articles, the liturgy, ordinal, discipline, and polity of the church of *England* are *incorporated* into, become the matter, and made a part, of the body of our laws ; legal effects are annexed to its administration, legal provisions made for its support, and certain rights and privileges settled

settled by law on the pastors and professors of it.

“ The first particular effect I observe of these laws is, that they give the professors of that religion a legal property, in the privileges and advantages, they confer on them, and consequently a right to be protected by law in the enjoyment of them.”

I have before said, that our intellectual operations are not under the controul of the civil or political power of the society. The legislature, therefore, never attempts to enjoin the internal mental approbation, but only the external peaceable submission to its requisitions. † “ It was never in my view to offer the civil authority, as a ground of assent in matters of religion, even thus far, much less as an authority, which ought to over rule our own convictions. The magistrate or legislator, as such only, commands, and the submission due to him under that character, is not assent of judgment, but obedience of practice, so far as may consist with prior obligations. The nature and ends of society require an obedience, either active or passive to his laws, whether we approve the matter of them or not ; but the

The legislature subjects not the intellect to its requisitions.

† Rogers's Vindication, p. 207.

The dissent of  
some invalidates  
not the act of  
the majority.

nature and ends of society do not acquire assent to his judgment: and my denying to private subjects a right publicly to oppose his laws, does not in the least imply an obligation to assent to his judgment in the matter of them." When, therefore, the community or legislature passes a new law, the freedom of my thoughts upon the subject of it, is in no manner impaired nor affected by the enacting of it; but my internal or intellectual disapprobation or dissent, can never warrant any positive or external contempt of, or resistance to the law. If such resistance were permitted, no law could acquire a binding force without the universal consent of every individual member of the legislature. It is an universal maxim of legislation, that when a law has once been enacted by the majority of the legislature, it is as binding upon those, who opposed, as upon those, who consented to the passing of it. When, therefore, the legislature enacts, that a certain religious worship shall be sanctioned and supported by the state, † "the conclusion asserted by the law is not, *This is a true religion; much less, this is the only true religion* (for he may believe several other schemes of religion

† Rogers's Vindication, p. 207.

equally

equally true, and yet be determined by very good reasons to establish that); but the conclusion of the laws is precisely this: this is the religion *shall be favoured with a civil establishment in this community*. This conclusion is a civil law of that community, stands upon the same foot, and is equally protected from the public opposition of private subjects, with any other law of the same importance."

And when this particular religious cult or worship shall have once received the civil sanction of the state, it is certainly equally binding and coercive upon the community to support it in an external civil way, as any other civil sanction whatever. So, \* "when the supreme authority has debated and determined a conclusion of law, a private subject may not, consistently with the peace of the society, and the common duty of subjection, be permitted to continue on the debate, or revive it as often as he pleases in a public way, (*i. e.*) print and publish books and arguments against the justice or expediency of the law. The intention, or at least the consequence of such actions must be disparaging the wisdom or justice of the legislature, taking from them the esteem and confidence of

Laws respecting the civil establishment of religion as binding as other laws.

The passing of a law induces an obligation in all to submit to, and not to oppose it.

\* Rogers's Vindication, p. 224.

their

their subjects, disquieting the minds of those, who are satisfied with the law, and raising up parties in opposition to it. The laws establishing religion stand, as laws, on the same foot with all others; and if such acts of opposition to other laws would justly be esteemed mutiny and sedition, they will have the same characters, when done in opposition to the laws establishing religion."

The civil effects  
of religion upon  
a community.

It is the general opinion of the most approved writers upon political and civil liberty, that all the lawful acts of the community must necessarily tend to the peace, welfare, and preservation of the community; and it is also their general opinion, that religion tends mainly to those ends. § "To say that religion is not a restraining motive, because it does not always restrain, is equally absurd as to say, that the civil laws are not a restraining motive. It is a false way of reasoning against religion, to collect in a large work a long detail of the evils it has produced, if we do not give at the same time an enumeration of the advantages, which have flowed from it. Were I to relate all the evils, that have arisen in the world from civil laws, from monarchy and from republican government,

§ Montesquieu's Spirit of Laws, b. xiv. x. c. ii.

I might

I might tell of frightful things. Was it of ~~no~~ advantage for subjects to have religion, it would still be of some, if princes had it, and if they whitened with foam the only rein, which can retain those, who fear not human laws. A prince, who loves and fears religion, is a lion, who stoops to the hand, that strokes, or to the voice that appeases him. He who fears and hates religion, is like the savage beast, that grows and bites the chain, which prevents his flying on the passenger. He, who has no religion at all, is that terrible animal, who perceives his liberty only, when he tears in pieces, and when he devours.

§ “The general consent of mankind in any one conclusion, though it be not, in strictness, a proof of truth or justice, yet is a fair presumption of it. In all civilized nations, of whom we have any account past or present, we find some established religion. Hence I take leave to conclude, that the wisest men in all ages (for such the founders and governors of societies may equitably be presumed) have judged it their right and duty to establish some religion, and that the peace and interests of society required, that some should

The duty of a community to have a civil establishment of religion.

§ Rogers's *Vindication of the Civil Establishment of Religion*, p. 21 and 22.

be

be established. All the disputes and contentions, which have happened on this subject, have related to the choice of the religion ; but in this conclusion, that some should be established, the wisdom of all ages and countries has concurred ; and this concurrence I insist on, as a full reply to all those authorities of private writers, which are or can be cited, as favouring a contrary judgment. So said the elegant and learned author of *Principles of Penal Law* †. “ Religion hath been wisely established by law, as useful and necessary to society ; and is so wrought into the very frame of our government, as to become a main part of the constitution. The magistrate, therefore, though the well being of the state be his peculiar object, is by no means exempted from a due concern for the religion of his country. But it is no consequence from these premises, that men should be debarred liberty of conscience, and the free use of reason and inquiry ; much less can any argument be drawn from them in favour of persecution. Freedom of thought is the prerogative of human kind ; a quality inherent in the very nature of a thinking being ; a pri-

† Mr. Eden, now Lord Auckland, p. 91.

vilege, which cannot be denied to him, or taken from him."

It would far exceed the intended bounds of this publication, were I to undertake the consideration of all the reasons for and against the propriety and advantages of the civil adoption of a religious establishment. Very solid and subtle arguments are produced by the opposite partizans; and it would require a very long treatise indeed, to digest the substance, analyze the reasoning, and elucidate the conclusions of the historical, political, philosophical, and theological writers upon this subject. The application of the simple principles, that I have already endeavoured to establish, will perhaps, conduct the mind more clearly and immediately to the true point, than the most elaborate, minute, and impartial investigation of all the reasons and arguments, that have been written upon the subject. It must be allowed, that in the present situation of human affairs, many very cogent arguments may be alledged against the adoption of such an establishment in a new government, which do not in the least weaken the necessity of maintaining and preserving it, when once established in an old one. As the latter case alone affects our constitution, I shall drop every consideration of the former.

Many reasons for not making a civil establishment in a new government which do not justify the abolition of it in an old one.



Man ought not to be punished for speculative opinion of religion.

In the English, as well as every other community, each individual member of it has the same right, duty, and obligation to follow the dictates of a sincere conscience. As long, therefore, as in this he does nothing to injure nor offend the community, so long ought he not in any manner to be punished or chastised for differing either in doctrine or discipline from that religious society, which has received the civil sanction of the state. "Therefore, says Dr. Priestley, in his *Essay on the First Principles of Government*, \* "as a being capable of immortal life (which is a thing of infinitely more consequence to me, than all the political considerations of this world) I must endeavour to render myself acceptable to God, by such dispositions and such conduct as he has required, in order to fit me for future happiness. For this purpose, it is evidently requisite, that I diligently use my reason, in order to make myself acquainted with the will of God; and also, that I have liberty to do whatever I believe he requires, provided I do not molest my fellow creatures by such assumed liberty."

The community will not judge any action that tends to subvert government to be dictated by religion.

In vain will any individual attempt to palliate or justify an action, that is offensive or injurious to the community, by the plea or defence of its being directed or enjoined by

\* Pag. 140.

his religion ; for as it is by the particular ordination of Almighty God, that society is necessary for man, and society cannot subsist without government ; and as Almighty God left the particular form of government to the option of each community, and has in the most express manner enjoined and commanded the individuals of every community to submit to, and obey that government, which in exercise of the liberty, which he had granted them, they have formed for themselves, it is evident, that the community is fully warranted in judging, that no action, which tends to disturb or subvert the end or preservation of the government, can have been directed or enjoined by that deity, whose justice and consistency are equal with all his other infinite perfections. These false pretences or calls of conscience to disapprove, resist, or oppose the religion sanctioned or established by the state, are more pointedly reprobated by the learned divine, whom I have so often quoted. \* “ A pretence of conscience for opposing the right of the magistrate (or supreme sovereign power) to establish any religion at all, cannot be supported by the plea of a special mission from

\* Rogers's Vindication, p. 149, 150.

God ; because a doctrine so absurd and destructive to human society, reason cannot admit to be from God : and he, who pretends to come from God with such a message, brings with him such an internal disproof of his mission, as would overrule any outward proofs of it ; and he may as well pretend a revelation, requiring him to tell us, there is no God."

Every man is presumed to be affected towards his religion, in proportion as he thinks, and feels, that it is the pure effect of his own voluntary choice \*. From hence arise the love and reverence, which the majority of the English nation bear to their church ; and from hence also is redoubled the obligation upon all dissenters from that church, to submit unto, because they are supposed to join and concur in all the acts of the legislature, by which the church receives the civil sanction of the state. Nor can their consciences be in any manner affected by such concur-

The consciences of individuals not concerned in the truth of the religion which receives the civil establishment.

\* Mr. Burke, a professed member of the national church, speaks, as all other such members feel about it. " First, I beg leave to speak of our church establishment, which is the first of our prejudices ; not a prejudice destitute of reason, but involving in it profound and extensive wisdom. I speak of it first. It is the first, and last, and midst in our minds," *Reflections on the Revolution in France*, p. 136.

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rence, although they should disapprove of, or condemn the tenets of that church; since, as Dr. Rogers observes, *a religion becomes not one jot the more true for being established.* The difference, therefore, is great between the submission, which, upon the principles of all civil government, we are bound to shew generally to the civil sanction or establishment, which the state gives to any religious system, and the intellectual adoption of the peculiar tenets and doctrines, which distinguish that particular society from any other. The toleration, which the legislature grants to those, who differ from the established religion, is the only proof that needs be alledged, that they do not mean to force or impose the belief of their religious tenets upon the consciences of any member of the society. For \* “ what can be more just and equitable, than to leave every person at full liberty to act according to his own understanding, in matters which regard none but himself?”

Before I leave this subject, it will be proper to say something upon the nature of church lands, or ecclesiastical property, concerning which many erroneous notions are

\* Noodt's Discourse on Liberty of Conscience, p. 97, 98.

*Of the civil Establishment of Religion.*

conceived and propagated, from inattention to their origin or source. When the state establishes a religion, it clothes or invests the clergy of that religion with certain political qualities; one of which is a corporate capacity, by which they are made perpetual bodies, always represented by successors. By this quality of perpetuity, whatever property is once acquired by a clergyman in his corporate capacity, it is rendered unalienable for ever, and was therefore formerly expressed by our ancestors, by the term *Mortmain*; which imported, that the hands, into which the property had passed, possessed no active power or capacity of transferring it to others. Now the right of holding, modelling, and transferring property, is given and regulated by the sovereign power of every state; and therefore the civil power alone could enable individuals to vest the land, which by the state they were permitted to enjoy to the exclusion of others, in these corporations; or, to use the words of the statute (7 Ed. I.) *per quod in manum mortuam devenerint*. Whatever land was given by the state, or by the municipal law was permitted to be given by individuals to the church, was to most purposes divested of those transferable and descendible, or inheritable qualities, with which  
the

the general landed property of the nation was endowed. But the state still retained its general power or controul over it, even after it had arrived into the dead possession of the church; for although aliens might be, and were often, in fact, bishops, abbots, and other spiritual corporations in this county, yet the law never permitted them to hold, enjoy, and defend the lands belonging or appropriated to them, even in their corporate capacity, in the same manner as natural-born subjects\*; which could not be, if the property so given to, or vested in these spiritual corporations, were from that moment taken out of the controul of the civil power.

The pious dispositions of our ancestors rendered them often lavish in their donations to the church; whether to procure their supplications during life, or, according to their religious belief, to insure their intercessions with God after their death, to shorten or alleviate their sufferings in purgatory, is immaterial to consider; for if this sort of property could be given to, and be enjoyed by these spiritual corporations independently of the state, then could not the state any more prevent the donation or investiture of the property, than new-model, alter, or alienate it,

\* Vide the case of the Prior of Chelsey and other cases in the year books.

when

when once made ; but we have repeated instances of both in this country, therefore it will be generally admitted, that all church livings, benefices, possessions, or temporalities, are but appendages of the civil establishment of religion, and consequently subject to the controul of that power of the state, which could alone institute such an establishment. Having already said so much of the nature of real spiritual powers, which of themselves cannot produce any civil effect, consequently cannot give the legal dominion of any landed property, it will be useless to say, that the Bishop of Rome, even whilst our ancestors acknowledged his spiritual supremacy, could not dispose of, nor possess one inch of land within the kingdom of England ; for it is a matter of notoriety, that although in former times the Popes appointed sometimes even foreigners, and generally confirmed the appointments made by the king to bishoprics, yet the admission to, and enjoyment of their temporalities or landed possessions depended entirely upon the civil usages and sanctions of the state. Church lands have at all times been looked upon as a trust-fund for the edification and benefit of the country, where they were situated ; and as the benefit and advantages of each country must essentially be the objects of the care and duty of the

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the sovereign power of the state ; so the appropriation of such trust-funds must ultimately rest with the state.

Although every act of the representatives of a community be uncontrollable by any superior human power, yet it does not follow, that every act, which they pass, is necessarily acceptable in the sight of God, or strictly consonant with the principles of justice or morality: thus, for example sake, suppose the legislature had, under a very unwarrantable influence of a prince, diverted a part of some public fund from the laudable intention of the donor or founder, to the unmerited reward of a court favourite, the act would be binding upon all mankind ; nor would individuals be warranted in questioning its validity, for want of purity and uprightness of intention in the persons, who passed it. If this principle were once admitted, the obedience of the subject would be squared only by his arbitrary judgment of the conscientious obligations of his sovereign. The consequent confusion in a state would be unlimited. Hence appears the difference between the free power and the just right of acting. It may often be unjust in a sovereign to enjoin, what it will be the duty of a subject to perform. Yet no power whatever on earth can enact what is contrary  
to



to the law of God and reason, or what is commonly called *malum in se*.

As early as in the thirteenth century, our ancestors, judging that any further increase of opulence to the church would be prejudicial to the state, passed the statute of mortmain (18 Ed. I. c. 3.) to prevent any further donation of lands to a spiritual corporation. In the year 1307, (35 Ed. I.) the representatives of the nation gave the most unequivocal proof of their controul over the possessions of the church by enacting, that no religious house nor community should send any part of their revenue to their foreign superiors; though the very same act authorized such foreign superiors of the different religious orders to visit their monasteries and convents in England, and to examine and regulate *those things only, that belong to regular observation and the discipline of their order*. The line of difference could not be more strongly marked between the *spiritual* and the *civil* power. For if the spiritual superiors of these religious houses had any right, power, or jurisdiction over their revenues or possessions, the parliament could not have prevented them from receiving them. And if these abbots, priors, or other superiors, had the free, full, uncontrouled power or right over the temporalities or revenues of  
 their

their convents, they could not have been prevented by parliament from disposing of them, as they might think proper; for the only full test of perfect dominion in property is the absolute freedom of disposing of it. Moreover, if these church lands were not then looked upon as a part of the national *trust-fund*, parliament would not have enacted, that they should be forfeited to the state by such convents, as permitted their *alien spiritual* superiors to interfere with or take away any part of their revenues or possessions.

The church lands and revenues, which in the reign of king Henry VIII. were given to or vested in lay persons by parliament, were confirmed to the lay proprietors by the first and second Phil. & Mary, c. 8. Now if the act of divesting them out of the spiritual corporations, and vesting them in lay persons, were sacrilegious and against the law of God, or *malum in se*, then was it out of the power of parliament to enact it, and the act was of itself invalid, and an invalid act can receive no confirmation, for *confirmare est id, quod est, firmum facere*. No length of time could induce an obligation of complying with an act of parliament, that enacted *malum in se*; but in this case, barely twenty years had intervened between the passing of the acts and their confirmation. it appears evident, that the parliament

parliament in queen Mary's days after their reconciliation with the see of Rome, held themselves to possess the same power or controul over the church lands, as did the parliament in the time of king Henry her father; for although they might have been induced by many political reasons to confirm the possessions of the church lands to the then lay proprietors, yet the same reasons for peace and quiet could not apply to the crown, as to private individuals; and by that very act were all such lands and revenues confirmed to the queen, which had not been divested out of the crown during the two preceding reigns. Whence we must necessarily conclude, that although parliament be never justifiable in misapplying any part of the national fund; yet do they command the same power and controul over the revenues of the church, as over any other part of that fund; and are equally bound by their duty and trust to model and regulate it, as they shall think the preservation and welfare of the community require.

The statutes *for the clergy and of provisors of benefices* (35 Ed. III.) and of *premunire for suing in a foreign realm, or impeaching of judgment given*, (27 Ed. III.) are founded in the power of parliament over the temporalities of the church.

## C H A P. V.

OF SOME MODERN DOCTRINES CONCERNING  
THE RESISTANCE OF INDIVIDUALS AGAINST  
THE CIVIL ESTABLISHMENT OF RELIGION.

**N**O man of the slightest observation or reflection can at this day be ignorant of the confidence, with which the malcontents of the hour inveigh against the ecclesiastical and civil establishment of our present constitutional polity ; insisting upon the absolute subversion of the one, and a general reformation and alteration of the other. But it is an obvious question, Who are these malcontents ? They are not only composed of the remains of some of the old sets of dissenters from the established church, such as anabaptists, puritans, independants, &c. but more generally of the various sets of modern subdissenting improvers upon their ancient masters, whom Dr. Price seems, with unbounded affection and zeal, to have admitted as his worthy associates and fellow labourers in the good common cause of dissent from the principles, and resistance against the establishment of the national church. Of these Mr. Burke speaks, with

The malcontents discontented with the present establishment.

Dr. Price's encouragement to dissent.

with his usual elegant and nervous poignancy; \* " If the noble seekers should find nothing to satisfy their pious fancies, in the old staple of the national church, or in all the rich variety to be found in the well-afforted warehouses of the dissenting congregations, Dr. Price advises them to improve upon nonconformity, and to set up, each of them, a separate meeting-house, upon his own particular principles †. It is somewhat remarkable, that this reverend divine should be so earnest for setting up new churches, and so perfectly indifferent concerning the doctrines which may be taught in them. His zeal is of a curious character. It is not for the propagation of his own opinions, but of any opinions. It is not for the diffusion of truth, but for the spreading of contradiction. Let the noble teachers but dissent, it is no matter from whom or from what. This great point once secured, it is taken for granted their re-

\* Reflections on the Revolution in France, p. 14, and 15.

† " Those who dislike that mode of worship, which is prescribed by public authority, ought, if they can find no worship out of the church, which they approve, to set up a separate worship for themselves; and by doing this, and giving an example of a rational and manly worship, men of weight, from their rank and literature, may do the greatest service to society, and the world." P. 18, Dr. Price's Sermon.

ligion

ligion will be rational and manly. I doubt whether religion would reap all the benefits which the calculating divine computes; from this great company of great preachers. It would certainly be a valuable addition of non-descripts to the ample collection of known classes, genera, and species, which at present beautify the *hortus ficcus* of dissent."

Whenever, in the course of this work, I shall have occasion to mention any sets of persons known by a common description or appellation of religious societies, or sectaries dissenting from the established church, I do not mean even to hint at the *religious* or theological tenets, doctrines, or principles, by which they differ from it or from each other.

Polemical discussion is not my province. And I have no other motive nor reason to refer too or animadvert upon the tenets, doctrines, or principles of any such societies or sectaries, but inasmuch as they contradict or counteract those general and fundamental principles of civil government, upon which the system of our present constitution and government is formed and preserved. The inhabitants of this island certainly form one entire community, to whom it is fully competent to model and establish that constitution and system of government, which they shall chuse; and  
from

The author's intention is to discuss the political principles only of dissenters.

The right of the community to check and punish refractory members.

from this competency arises the indefeasible right, which the community possesses, of checking and punishing such refractory and seditious members of her body, who, by their open and avowed principles and actions, endeavour to weaken, disturb, or subvert that political œconomy of the state, which is the deliberate and free choice of the community. It will therefore be more proper in future to treat and speak of these persons, rather as political opponents of the principles of the state, than religious dissenters from the doctrines of the church of England.

Dr. Priestley's doctrines about resistance examined.

By examining the doctrines of Dr. Priestley, upon this very important subject, the application of the principles, which I have already laid down, as admitted by all, will more clearly appear. \* “ In examining the right of the civil magistrate to establish any mode of religion, or that of the subject to oppose it, the *goodness* of the religion, or of the mode of it, is not to be taken into the question; but only the propriety (which is the same with the utility) of the civil magistrate, as such, interfering in the business. For what the magistrate may think to be very just, and even conducive

Dr. Priestley's Essay on the first Principles of Government, p. 141.

to the good of society, the subject may think to be wrong and hurtful to it."

If Dr. Priestley here means, by the term *magistrate*, the supreme legislative power of the state, from what has already been said, it will clearly appear, that the subject is bound and concluded by the act of his new trustees and delegates; and such are the three estates of our legislature, as I shall hereafter more particularly observe. It is not possible, therefore, in the present system of the British constitution, for the subject (if by the term *subject* is meant the majority of the community) to think that wrong and hurtful, which the representatives of the community, who must be supposed to speak the language of the real majority, think to be just and conducive to the good of the society. But although the minority of the community should think so differently of the act of the majority, their disapprobation or consideration of the measure will neither invalidate the act, nor justify any resistance against it, when it has once acquired the force of a law: for § "every law is a direct emanation of the sovereignty of the people," consequently must be taken for the act of the majority.

§ Mackintosh, p. 279.

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But



But if by the term *magistrate*, he means that executive magistratical power, which by the constitution is vested in the king or supreme executive power of the state, and from him is derived to all subordinate civil magistrates throughout the realm, the observation is perfectly absurd and irrelevant: for the executive magistrate has no legislative power; and he is equally bound by his duty and trust to enforce the laws, which make or which concern the civil establishment of religion, as any other laws whatsoever, which is very pointedly noticed by Dr. Priestley himself in another part of his works. † “The civil magistrate has nothing to do with the truth of religion, being obliged to provide for that, which is professed by the majority of the subjects, though he himself should be of a different persuasion. Thus the king of Great Britain must maintain Episcopacy in England and Presbyterianism in Scotland, whether he be a Presbyterian as king William, a Lutheran as Geo. I. or a true churchman as his present Majesty.”

§ “Others have the moderation and good sense to admit the reasonableness of persons

† Letters to Mr. Burke, Lett. vi. p. 51.

§ Priestley's *Essays on the First Principles of Government*, p. 145.

being

The civil magistrate nothing to do with the truth of religion.

being allowed to judge for themselves, and to think as they please in matters of religion, and even to exercise whatever mode of religion their consciences approve of; but they will not admit of any thing, that has a tendency to increase the obnoxious sect, no publication of books, or other attempts to make profelytes, nor even a reflection upon the established religion, though it be necessary to a vindication of their own. But what signifies a privilege of judging for ourselves, if we have not the necessary means of forming a right judgment, by the perusal of books containing the evidence of both sides of the question? What some distinguish by the names of *active* and *passive* opposition to an established religion, differ only in name and degree. To defend myself, and to attack my adversary, is, in many cases, the very same thing, and the one cannot be done without the other."

This assumption of a right to reprobate and resist the civil establishment of religion appears to be founded upon the presumption, that it is equally competent for every individual of the community to form his own mind upon the subject of religion. So says Dr. Priestley to Mr. Burke, \* "It is no un-

\* Dr. Priestley's Letters to Mr. Burke, Let. vi.  
p. 51.

The dispute instituted by Dr. Priestley upon false grounds.

common thing for what appears to be profound and extensive wisdom to one man, to appear the extreme of folly to another ; and unfortunately, owing perhaps to the difference of our education and early habits, this is precisely the difference between you and me. What you admire I despise ; and what you think highly useful, I am persuaded is highly mischievous." Now, were this a matter of mere personal variance between Dr. Priestley and Mr. Burke upon a point of controvertible matter, those, who might think it worth their while to take the point of difference under their consideration, would either decide upon it by the degree of deference and authority, which they would allow to the contesting parties, or by the internal merits and evidence of the question in dispute. But in the present case the question is, how far any one individual is authorised to oppose the solemn and formal act of the majority of the community. Mr. Burke has expressed the known and avowed sentiments of the majority of this community, who have for some centuries thought proper to apply a part of their power and authority, in supporting that religious system, which was the result of their own free election. Dr. Priestley on behalf of himself, and of some  
Dissenters

Dissenters and Sub-dissenters from this religious establishment, (though avowedly the minority of the community) not only sets up his own judgment in defiance and contradiction to the most solemn act of the majority, but he also treats it as an act of *extreme folly and mischief*.

As the legislative power does not attempt to subject the intellects of individuals to the propriety or rectitude of its acts, but only to ensure their external and peaceable submission to them when once enacted; the want of reason, or even depravity of motive in enacting the laws, can never justify a public or external opposition or resistance against them. I do not precisely know the proportion, which the number of Dissenters of all denominations in this country bears to that of the establishment; but for argument's sake I will suppose, that three out of nine millions are Dissenters: there will remain six millions, who certainly have individually as much right, and collectively more right to give civil sanction to their religion, than the three millions have to object against it. For by their making such an establishment, they do not enforce nor impose the belief of their religion upon the minds and consciences of individuals; but presuming, as the fact is, that

The reasons and motives of the legislators in passing laws, no justification of those who resist them.

that the adoption of religion is the free act of each of them, they agree to acknowledge and declare by a public civil act of that power, which is avowedly in them, that a *particular* religion is that, in the adoption of which the majority does concur. And because the majority does thus concur in its adoption, they think proper to appropriate a certain part of the national fund, of which they are the dispensers, to the maintenance and support of the ministers of this religion, and they invest them, according to their degrees, with certain civil or legal rights, benefits and advantages; and in these alone consists the civil establishment of a religion. In justice, however, to the majority of our community, who insist upon such an incorporation of an ecclesiastical with the civil establishment of the state, I cannot omit to lay before my readers some of the many reasons and motives for such their determination.

Reasons why  
the community  
choose to make  
a civil establish-  
ment of religion.

\* "I assure you, I do not aim at singularity. I give you opinions, which have been accepted amongst us from very early times to this moment, with a continued and general approbation, and which indeed are so worked into my mind, that I am unable to

\* Mr. Burke's *Reflections on the Revolution in France*, p. 147, 148.

distinguish

distinguish what I have learned from others, from the results of my own meditation.

“ It is on such principles that the majority of the people of England, far from thinking a religious national establishment unlawful, hardly think it lawful to be without one. In France you are wholly mistaken, if you do not believe us above all other things attached to it, and beyond all other nations; and when this people has acted unwisely and unjustifiably in its favour (as in some instances they have done most certainly) in their very errors you will at least discover their zeal.

“ This principle runs through the whole system of their polity. They do not consider their church establishment as convenient, but as essential to their state; not as a thing heterogeneous and separable; something added for accommodation; what they may either keep up or lay aside, according to their temporary ideas of convenience. They consider it as the foundation of their whole constitution, with which, and with every part of which, it holds an indissoluble union. Church and state are ideas inseparable in their minds, and scarcely is the one ever mentioned without mentioning the other.”

I do

I do not wish, much less do I undertake to prove, that Mr. Burke's reasons for thinking a religious establishment in our constitution *profound and extensive wisdom*, are stronger and more conclusive, than Dr. Priestley's are for thinking it *the extreme of folly, and very mischievous*. But I do contend, that considering Mr. Burke and Dr. Priestley as two individual members of the English community, each of them has an equal right to form his own mind upon this subject, as well as upon every other subject of legislation; and that very same right does every other individual of the nine millions possess. It suffices, therefore, that a majority of these nine millions choose to have such a religious establishment; it is evident, from what has been before said, that the minority, though they should be actuated by the better reasons, will nevertheless be concluded by the act of the majority, though the latter should be influenced by the weaker reasons. This is a fundamental principle of society, and consequently of all civil government. If it be once broken in upon, an irreparable breach will be immediately made in the constitution, that will ensure and accelerate the total dissolution of government; for no human law can have force or efficacy upon

The majority  
must conclude  
the whole,

though their  
reasons be less  
convincing than  
those of the mi-  
nority.

upon any other principle. If this principle be withdrawn from one law, it is withdrawn from all ; and then the firmest bulwark of the wisest legislators will crumble into an impalpable substance, and be irrevocably scattered by the weakest breath that reaches it. Hence may be seen the difference between principles and rules ; the former are universally and unexceptionably true and applicable to all possible cases ; the latter admit of exceptions, which are even said to strengthen and establish the rule.

*A principiis nunquam recedendum :* True principle will carry us through every difficulty, that can possibly be started by the enemies of our constitution ; for I must ever call those enemies to the state, who disavow and oppose the fundamental principles of our constitution and government. The most feeling ground, upon which Dr. Priestley seems to combat against the civil establishment of a religion in a state, is that of the maintenance provided and secured by the state, for the ministers, teachers, and guardians of their religion. \* “ Let it not be said that the church of England would have the impudence, if it had the power, to collect its

Dr. Priestley  
dissatisfied with  
tythes.

\* Priestley's Letters to Mr. Burke, Let. vi. p. 59.



tythes from every country in Christendom, though every parish should be a *sinecure*, and all their bishops be denominated in *partibus*. Let there be an appearance, at least, which now there is not, of some regard to *religion* in the case, and not to mere revenue. Often as I have urged this subject, and many as have been those, who have animadverted upon my writings, hardly any have touched upon this; they feel it to be tender ground; they can, however, keep an obstinate silence; they can shut their ears and turn their eyes to other objects, when it is not to their purpose to attend to this."

The obligation  
to pay tythes  
equal upon all.

Were I merely answering the objections of Dr. Priestley, I should content myself with insisting, that the majority of the community had chosen to incorporate an ecclesiastical establishment as an essential part in their civil constitution; that this ecclesiastical establishment should be guided and preserved by bishops, and their inferior clergy; that they should be maintained by certain portions or allotments of the national produce or property; and that therefore the Dissenting minority were effectually bound, as members of the community, to contribute their quota in tythes, or otherwise, towards the maintenance of the clergy, to whom the act of the  
majority

majority had given not only a legal subsistence, but a legal right to possess, enjoy, and defend the maintenance and civil advantages allotted to them by the community; for these they do not enjoy by virtue of their spiritual ordination, but as the free and voluntary gift or offering of the community. This also is a *direct emanation from the sovereignty of the people.*

Since Dr. Priestley, though avowedly of the Dissenting minority, so warmly insists upon *the folly and mischief of supporting a religious establishment*, I shall take the liberty of submitting to the public some of the reasons and motives, that appear to have operated in favour of it upon the majority of this community; for he certainly will not refuse to the majority of the community, the right of grounding their acts upon reasons and motives; nor can he prevent those reasons and motives from operating their effect upon such individuals as may feel their force.

† “ So tenacious are we of the old ecclesiastical modes and fashions of institution, that very little alteration has been made in them since the fourteenth or fifteenth century, adhering in this particular, as in all things else,

Reasons why the majority prefer their present religious system.

† Burke's *Reflections on the Revolution in France*, p. 148, 149, 150.

to our old settled maxim, never entirely nor at once to depart from antiquity. We found these old institutions, on the whole, favourable to morality and discipline; and we thought they were susceptible of amendment, without altering the ground. We thought that they were capable of receiving and meliorating, and above all, of preserving the accessions of science and literature, as the order of Providence should successively produce them. And, after all, with this gothic and monkish education (for such it is in the ground-work) we may put in our claim to as ample and as early a share in all the improvements in science, in arts, and in literature, which have illuminated and adorned the modern world, as any other nation in Europe; we think one main cause of this improvement was our not despising the patrimony of knowledge, which was left us by our forefathers.

“ It is from our attachment to a church establishment, that the English nation did not think it wise to entrust that great fundamental interest of the whole, to what they trust no part of their civil or military public service; that is, to the unsteady and precarious contribution of individuals. They go further; they certainly never have suffered, and never will suffer, the fixed estate of the church to be converted

converted into a pension, to depend on the treasury, and to be delayed, withheld, or perhaps to be extinguished by fiscal difficulties; which difficulties may sometimes be pretended for political purposes, and are, in fact, often brought on by the extravagance, negligence, and rapacity of politicians. The people of England think, that they have constitutional motives, as well as religious, against any project of turning their independent clergy into ecclesiastical pensioners of state. They tremble for their liberty, from the influence of a clergy dependent on the crown; they tremble for the public tranquillity, from the disorders of a factious clergy, if it were made to depend upon any other than the crown. They therefore made their church, like their king and their nobility, independent.

“ From the united considerations of religion and constitutional policy, from their opinion of a duty to make a sure provision for the consolation of the feeble, and the instruction of the ignorant, they have incorporated and identified the estate of the church with the mass of *private property*, of which the state is not the proprietor, either for use or dominion, but the guardian only, and the regulator. They have ordained that the provision

vision of this establishment might be as stable as the earth on which it stands, and should not fluctuate with the Euripus of funds and actions."

I have now, I hope, adduced sufficient reasons and arguments to convince my readers, that every community is fully competent to make a civil establishment of that religion, which the majority of the community shall find it their duty to adopt and follow; and consequently, that our present church establishment forms an essential part of the English constitution: and from hence arises the first constitutional division of the community, or people, into *clergy* and *laity*, whose several and respective rights and duties in the state, I shall hereafter explicitly set forth.

Division of the  
people into  
clergy and laity.

† "Had I inferred the truth of our religion from its civil establishment, the deists might have treated the argument with that levity which Mr. Chandler advises; but a deist of common sense might perceive, that I appealed to the laws of our establishment, not for the conviction of his understanding, but the correction of his insolence. Where the truth of the Christian religion was the ques-

† Rogers's *Vindication of the Civil Establishment of Religion*, sect. i. p. 191.

tion before me, I used other arguments ; but when a private subject took upon him publicly to oppose the right of the legislator to enact any such law, to represent this power as unjust and tyrannical, and under these characters to dissuade all submission to it, these I think actions inconsistent with the obligations of a subject, and that the execution of our laws may justly be called for in restraint of them. The truth of a religion depends on its proper grounds. If it was false before it was established, the establishment will not make it true ; and he, who from the evidence of the thing is convinced it is false, cannot upon any authority believe it true."

From what has been said in this and the foregoing chapter, I hope it will sufficiently appear, that the sanction, which the laws give to the establishment of the church of England throughout England, and to Presbytery throughout Scotland, is in its tendency and effects merely of a civil nature ; consequently, that the obligation of submitting to it, is the very same as the obligation of submitting to any other civil law whatever. Now, every external and public disavowal of, or opposition to the civil exactions of the legislature,

Civil establishment of religion of the same force as any other civil law.

lature, must be criminal in an individual subject to the power of that legislature : But I shall hereafter have occasion to speak more fully upon the nature of crimes against the state.

## C H A P. VI.

## OF THE EFFECTS OF DENYING TRUE PRINCIPLES.

**I**T has been usual for most writers both ancient and modern, in discussing the subject of our constitution, to endeavour to trace its origin from the earliest antiquity, and to identify its form and substance through all the various modifications, changes, reformatations, and revolutions, which it has undergone since the first establishment of society, or of a community in this country. I beg the liberty of following a very different course. I establish a principle, which, if it ever existed, must now exist, and if it now exist, must have always existed; for what gives existence to a principle, is its universal and invariable truth, which, if it exist in one moment, must essentially have existed from all eternity; I need not, therefore, seek for its importation into this island by the Trojan prince Brutus; nor inquire whether it were borrowed by our British ancestors from their Gallic neighbours; nor whether it were the peculiar growth of our native soil; whether it grew out of the hedge-rowed towns or encampments of our warlike ances-

*Principle the true source and origin of our constitution.*



tors, or issued out of the sanctuaries of their mysterious Druids; whether it were imposed upon them by heathen Rome, or infused into them by Christian Rome; whether it were transplanted from Germany with our Saxon conquerors and progenitors, nor whether it attended the despotism of the Norman conqueror; nor, in a word, whether it flourished with vigour and luxuriancy, or withered in apparent decay, under the several houses of Tudor, Stuart, Nassau, and Brunswick.

Principles true  
from all eter-  
nity.

At this moment, this principle, *the sovereignty of power ever did, and now does, unalienably reside in the people*, exists, because it is universally and invariably true; and it must for ever have existed with the same force and efficacy, that it now does; for universal truth excludes all degrees. From this invariable and ever operative principle have arisen all the various changes, innovations, and improvements, which have at different times been effected in our constitution and government, by the means of reformation and revolution. The coercive introduction or imposition of new laws by the force of arms, can never make a part of the constitution and government of a free people, till they have been voluntarily submitted to, recognized, accepted, or confirmed by the act of the community.

nity \*. I shall hereafter have occasion, and, indeed, be under the necessity of considering more minutely the application of this principle to what we commonly call the *reformation* and the *revolution*.

Unfortunately for this country, the different occurrences, which have from time to time brought these political topics into discussion, have been productive of so much acrimony, venom, and heat, that the cool voice of reason has been seldom heard by either party, and consequently, conviction of the mind has rarely followed the discussion. For it is very certain, that few or none of the political writers of those days of animosity, either could or would separate, on one side, the principle, "that a supreme power resides in the people" from rebellion and treason; or, on the other side, distinguish between the legal prerogative of a lawful monarch, and the unwarrantable despotism of an usurping tyrant. It is the frequent boast of most modern writers, and of all modern theorists, that we live in an age enlightened beyond all others; and consequently, that our present existence exalts us, in ability and information, far above the level

Heat of party  
has prevented  
cool discussion.

\* "Laws they are not, therefore, which public approbation hath not made so." Hooker's Eccl. Pol. l. i. sect. 10.

The maintenance of true principles unfairly attributed to corrupt motives.

of our ancestors and predecessors. I have already declared myself to be little flattered with the advantage, though I will not dissemble, that the prepossession of such a conviction must, in a great measure, counteract the pernicious, though frequent, effects of hereditary and systematical prejudices. The learned bishop of Worcester, in talking of the impotent threats and attempts of the see of Rome to depose our sovereigns, says, that the Papists used all their ingenuity to justify and establish it; and that \* “one of their contrivances was, by searching into the origin of civil power, which they brought rightly, though for this wicked purpose, from the people; for they concluded, that if the regal power could be shewn to have no divine right, but to be of human and even popular institution, the liberty, which the Pope took in deposing kings, would be less invidious.” The maintenance of this doctrine cannot, I think, be fairly attributed to any such motive; for when the Popes of Rome so foolishly assumed the right of deposing temporal sovereigns, they evidently founded their idle pretensions upon the *spiritual supremacy*, which they claimed over all Christians; they must conse-

\* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 300.

quently have conceived a better, and might have set up a right more plausible in those days, in quality of Christ's *vice-gerents* upon earth, to dispose of rights holden by this spiritual *jure divino* tenure, than of such as were merely of a secular or temporal nature. For the Popes have always been allowed by all Roman Catholics, a power to dispense, in certain cases, with spiritual obligations, such as vows or promises made by individuals immediately to Almighty God; but never to dispense with, or annul a civil or moral obligation of one individual to another, so as to weaken or defeat the rights of a third person. The learned prelate, however, very fairly accounts for the former prevalence of the opposite doctrine throughout this nation. \* “The Protestant divines went into the other extreme; and to save the person of their sovereign, preached up the doctrine of *divine right*. Hooker, superior to every prejudice, followed the truth; but the rest of the reforming and reformed divines stuck to the other opinion, which, as appears from the homilies, the Institution of a Christian Man, and the general stream of writings in those days, became the opinion of the church, and was, indeed, the received Pro-

The maintenance of false principles attributed to a laudable motive.

\* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 301.

testant doctrine : and thus unhappily arose in the church of England, that pernicious system of divine indefeasible right of kings, broached indeed by the clergy, but not from those corrupt and temporizing views, to which it has been imputed. The authority of those venerable men, from whom it was derived, gave it a firm and lasting hold on the minds of the clergy ; and being thought to receive a countenance from the general terms, in which obedience to the civil magistrate is ordained in Scripture, it has continued to our days, and may, it is feared, still continue to perplex and mislead the judgment of too many amongst us." I am particularly happy in being able to adduce the high and unbiassed authority of so respectable a prelate, in support of my own reasoning.

Not being warped by any party prejudice or principle, I am free to own my astonishment, that so many learned and respectable personages of every profession and description should so long have shut their eyes, or stopped their ears, or steeled their hearts against the truth of first principles. This respectable prelate has endeavoured to account for it ; though he is very far from justifying it.

" The

• “The growth of Puritanism, and the republican spirit, in order to justify its attack on the legal constitutional rights of the crown, adopted the very same principles with the jesuited party. And, under these circumstances, it is not to be thought strange, that a principle, however true, which was disgraced by coming through such hands, should be generally condemned and execrated. The crown and mitre had reason to look upon both these sorts of men as their mortal enemies. What wonder, then, that they should unite, in reprobating the political tenets, on which their common enmity was justified and supported?”

True principles  
opposed because  
urged by the  
enemy.

Dr. Priestley has said, with much truth, what I hope he will allow me to apply to my readers. † “I make no apology for the freedom, with which I have written. The subject is, in the highest degree, interesting to humanity; it is open to philosophical discussion, and I have taken no greater liberties, than becomes a philosopher, a man, and an Englishman. Having no other views, than to promote a thorough knowledge of this im-

Proper apology  
for writing  
freely upon in-  
teresting sub-  
jects.

\* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 303.

† Preface to Dr. Priestley's Essays on the First Principles of Government, p. xiii.

portant

portant subject ; not being sensible of any bias to mislead me in my inquiries, and conscious of the uprightness of my intentions, I freely submit my thoughts to the examination of all impartial judges, and the friends of their country and of mankind. They, who know the fervour of generous feelings, will be sensible, that I have expressed myself with no more warmth, than the importance of the subject necessarily prompted, in a breast not naturally the coldest ; and that to have appeared more indifferent, I could not have been sincere."

Necessity of  
forming our  
principles of  
policy.

I am sensible, that I have undertaken a very perilous task ; *periculosa plenum opus alea*. From the open and boasted wishes, and the actual attempts of many individuals to alter or subvert the present form of our government, I have found it incumbent upon me to examine and regulate my subordinate civil duties upon some fixt principles of immutable policy. I entered upon the task with much earnestness, and perfectly unbiassed by any party ; in my progress I have seen and trembled at many rocks, against which whole parties have appeared to me blindly and voluntarily to have run ; by varying my course, I flatter myself I have avoided them ; and if my discoveries be just, I know of no consideration,

consideration, that can dispense with my submitting to my countrymen a new chart of that coast, upon which so many of them have unfortunately perished.

Whatever divisions of parties have existed in our country for these three last centuries, whether between the retainers and reformers of the old religion, between the Church and the Presbytery, the Round-heads and the Royalists, the Whigs and the Tories, the Non-jurors and the Revolutionists, the original efficient causes of the several divisions into party have ceased or nearly disappeared in the variety and change of circumstances, which the kingdom has since experienced. Such (if any) of these parties as still subsist, seem rather to have received a mere nominal existence by hereditary descent, than to retain any of their constituent parts or fundamental properties. The nation, in fact, at present appears to me to be divided into two parties only, which have absorbed all the other; the *contents* with the present establishment, and the *non-contents*. The former far exceed the latter in numbers; and from the nature of the division, the majority must be actuated by a more uniform principle, than the minority. For the approbation of the particular constitution and government, which  
the

Little remains  
of the old spirit  
of different parties.

Present parties  
of *contents* and  
*non-contents*.



Principles and  
motives of the  
*malcontents.*

the nation has received from their ancestors, retains the majority in one body ; whereas, the dislike of the whole, or part of the same constitution and government ; the preference of any other, than the established religion and government ; the aversion from any church or state establishment whatever ; the wishes and expectancies of the indigent and distressed to profit by a system of equalization ; the allurements of a scramble to lust, avarice, and ambition ; the personal envy, jealousy, hatred, insult, injury, disappointment, or losses of individuals, are amongst the multifarious motives, reasons, and inducements, which bring together a set of discordant individuals, who, from the moment, and by the terms of their engagement, sacrifice their several heterogeneous principles to the common erected standard of discontent ; for in the political, as well as in the physical system, the most opposite ingredients may, like vinegar and oil, be so incorporated as to bear the appearance of a perfect coalition. When, therefore, I shall in future consider or speak of this opposite party, which I shall in general call the *minority*, I shall drop every idea of the nature of their original component parts, and distinguish them only from their opponents by that common quality, which constitutes

tutes them a party of malcontents, in opposition to the majority of the community, who are happy under, and therefore wish and intend to preserve the present form of their constitution and government.

Whoever views with perfect impartiality the present internal political state of this country, will, I am confident, readily admit, that it would be a fruitless attempt to single out one individual from the whole minority, who sides with that party, merely from the motives which distinguished one of the old parties of this country from the other, at the time of their original formation.

I may, perhaps, be singular, (this publication will prove how far I am warrantable) in attributing the formation, the continuance and the increase of all such parties, as have at different times divided our country, to the inconsiderate and hasty, though, perhaps, well meant denial of true principles. It is no less singular than true, that the Churchman, the Royalist, and the Tory, admitting and wishing to preserve the true constitutional form of the government in being, were so blinded in their zeal, as to deny the truth of first principles, upon which the Puritan, the Independent, and the Republican, unwarrantably engrafted the falsest doctrines. Instead of shewing,

Greatest evils  
arise from the  
inconsiderate  
denial of true  
principles.

shewing, that these doctrines were not consequences deducible from the principles, (for every consequence is virtually contained in its premises), they denied absolutely the principles, which were true, because they disapproved of doctrines, which were false, and which, consequently, could not be fairly drawn from true principles. Thus, when the alterations and differences of the opposite parties came to be publicly agitated, they seldom went further, than the truth or falsity of the principles themselves; in which contests the strength of the argument was necessarily with those, who contended for the principles; and whilst that party had the address to keep up the controversy upon this ground only, they were sure of making profelytes of all those, who had resolution or ability to form a judgment of their own.

The misfortunes, which have heretofore happened to our unhappy country, from the contests of these opposite parties, are of too serious a nature not to rouse every true patriot to the exertion of his utmost efforts to prevent a repetition of them. Nothing can be more certain, than that a party of no inconsiderable number of malcontents does at this moment exist in this country; nothing more evident, than that the party will gain

or

or lose strength in proportion to the accession or desertion of its numbers ; and nothing so attractive, as the plausibility and truth of the principles, which are supposed or represented to actuate and support the party. It is flattering to all men to judge in their own cause; it is the favourite maxim of modern politicians, to inculcate the right of every one to judge and act for himself; and it is artfully holden out by many, that whoever is not directed by his own opinion and judgment, is kept in darkness, and deprived of that freedom, which has been given to every individual by an allwise Creator.

When I call to my recollection the effects of former attempts to deduce false doctrines from true principle, I am necessitated to conclude, that if some true principles now established and supported by the minority, are denied by the majority, the daily desertions from the one to the other will very quickly invert the present proportion of their respective numbers ; for undeniable truth will ever make its own way, and by degrees gain over the multitude ; amongst whom more will be, in the end, left to the unbiassed freedom of their own judgment, than to the dictates of interested power and influence. It was long ago said, *decipimur specie recti* :

when

Truth will in  
the end make  
its own way.

when depravity disposes to evil, the strongest incentive to the actual commission of it is a plausible appearance of its rectitude. Much as I reprobate the modern doctrine of civil equalization, with all its tremendous train of destructive concomitants, so do I hold, that the denial of the truth of uncontrovertible principles must rather necessitate, than provoke men into the adoption of any doctrine, which leaves them the liberty of a free assent to such self-evident propositions.

I am happy in being sanctioned in my principle of reasoning, by the great apostle of modern liberty. \* "The Jesuits," says he, "about two centuries ago, in order to vindicate their king-killing † principles, happened,

\* Priestley's *Essays upon the First Principles of Government*, p. 27, 28.

† The works of Busenbaum, a German Jesuit, were burnt by the late Parliament of Paris, for teaching these principles. It will be candid, and, perhaps, satisfactory to the curious, to state the words, in which this king-killing doctrine is expressed by this author; as the judgment upon it will vary according to the admissibility of the doctrines of passive obedience and non-resistance. "*Ad defensionem vite & integritatis membrorum, licet etiam filio, religioso & subdito se tueri, si opus sit, cum occisione, contra ipsum parentem, abbatem, principem; nisi forte propter mortem hujus secutura essent nimis magna incommoda, ut bella, &c.*" lib. iii. pars 1. de Homicidio, art. viii. "To defend one's life, or limbs, it is lawful for a child,

pened, among other arguments, to make use of this great and just principle, that *all civil power is ultimately derived from the people*; and their adversaries, in England and elsewhere, instead of shewing how they abused and perverted that fundamental principle of all government, in the case in question, did what disputants, warmed with controversy, are very apt to do; they denied the principle itself, and maintained that all civil power is derived from God; as if the Jewish theocracy had been established throughout the whole world.”—And, \* “The history of this controversy, about the doctrine of passive obedience and non-resistance, affords a striking example of the danger of having recourse to false prin-

child, a religious man or a subject to defend himself against his parent, superior, or sovereign, if it be necessary, even by killing the aggressor; unless by killing him very great mischiefs indeed should happen, as wars, &c.” To Englishmen, who sometimes soften their verdict by finding *a se defendendo*, these principles may not seem more outrageous, than Dr. Priestley’s own doctrines. “If it be asked, how far a people may lawfully go, in punishing their chief magistrates? I answer, that if the enormity of the offence (which is of the same extent as the injury done to the public) be considered, any punishment is justifiable, that a man can incur in human society.” *Essays on the First Principles of Government*, p. 36.

\* Priestley, *ibid.* p. 29.

ciples

ciples in controversy. They may serve a particular turn, but in other cases, may be capable of the most dangerous application ; whereas universal truth will, in all possible cases, have the best consequences, and be ever favourable to the true interests of mankind."

## C H A P. VII.

## OF THE LEGISLATIVE POWER.

**I**T is singular, that in the variety of ancient and modern authors, who speak familiarly of the constitution, I scarcely find one, that attempts to define it; and yet I think it the first duty of every writer to define, at least according to his own conceptions, that, which he undertakes to discuss\*.

By the constitution of England, I mean those immediate emanations from the first principles of civil government, which the community have adopted as general rules for carrying into action that right or power of sovereignty, which unalienably resides with them, and which consequently form the immediate basis or ground, upon which all the laws of the community are founded. The transcendent force of the reasons for these

Definition of  
the constitution.

\* "By *constitution* we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions, and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community hath agreed to be governed."  
*Dissertation upon Parties*, Letter x. p. 108, printed 1739.



rules has acquired from the community an universal and unexceptionable admission of them, which has superseded the necessity of expressing them in a given form of words, like particular laws. They are not like those metaphysical or mathematical rules, which serve to direct and regulate the practice; but they are themselves active and practical rules, which can never cease to operate their effect upon the government, whilst the government subsists; they have a political buoyance in the state, and like a cork in the waves, which may by commotion of the element, be lost for a time from the sight, but in the calm must necessarily resume its visible station on the surface.

Instances of the constitution always returning to its level.

\* “ And, indeed, we may observe the remarkable manner, in which it has been maintained in the midst of such general commotions, as seemed unavoidably to prepare its destruction. It rose again, we see, after the wars between Henry the Third and his barons; after the usurpation of Henry the Fourth; and after the long and bloody contentions between the houses of York and Lancaster; nay, though totally destroyed in appearance,

\* De Lolme on the Constitution of England, b. ii. c. xviii.

after

after the fall of Charles the First; and, though the greatest efforts had been made to establish another form of government in its stead, yet, no sooner was Charles the Second called over, than the constitution was re-established upon all its ancient foundations."

The state of compulsive force, usurpation, or tyranny, is a temporary subversion of the government, as a tempestuous commotion of the sea is a temporary derangement or violation of the natural laws of specific gravity, by which the cork would for ever remain afloat upon the water. \* "As usurpation," says Mr. Locke, "is the exercise of power, which another hath a right to, so tyranny is the exercise of power beyond right, which no body can have a right to." And he says elsewhere, † "No polities can be founded on any thing, but the consent of the people."

Difference of  
usurpation and  
tyranny.

Before I enter immediately upon the particular nature of our constitution, it will not be improper to submit to my readers what this solid and perspicuous philosopher says of the general forms of a common-wealth.— ‡ "The majority having, as has been shew-

\* Locke of Civil Government, c. xviii.

† Ibid. c. xvi.

‡ Ibid. c. xvi.

Various sorts of  
government.

ed, upon man's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing, and then the form of the government is a perfect *democracy*; or else, may put the power of making laws into the hands of a few select men, and their heirs or successors, and then it is an *oligarchy*; or else into the hands of one man, and then it is a *monarchy*; if to him and his heirs, it is an *hereditary monarchy*; if to him only for life, but upon his death the power only of nominating a successor to return to them, an *elective monarchy*; and so accordingly of these the community may make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again; when it is so reverted, the community may dispose of it again anew, into what hands they please, and so constitute a new form of government. For the form of government depending upon the placing the supreme power, which is the *legislative*, it being impossible to conceive, that

that an inferior power should prescribe to a superior, or any, but the supreme, make laws, according as the power of making laws is placed, such is the form of the commonwealth."

The supremacy or sovereignty of all political power, is the legislative power in a state; and the first and fundamental positive law of all commonwealths, is the establishing of the legislative power. This, in fact, is the act of the community's vesting their own right or power in their delegates or trustees: and the English community had certainly the same right, as every other community, upon uniting in society, to make this delegation, or create this trust in whatever manner they chose; in other words, they were perfectly free to adopt a democratical, an aristocratical, or an hereditary, or an elective monarchical form of government. This was, as I have before proved, a freedom given by God to each community; *singula species regiminis sunt de jure gentium*; but the choice being once made, or these delegates and trustees having been once nominated and appointed, the submission of the people to them is *jure divino*.  
\* "This legislative is not only the supreme

Legislative power.

\* Locke, ubi supra.

power of the commonwealth, but sacred and unalterable in the hands, where the community have once placed it; nor can any edict of any body else, in what form soever conceived, or by what power soever backed, have the force and obligation of a law, which has not its sanction from that legislative which the public has chosen and appointed; and so, in a constituted commonwealth, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate."

This nation or community, have for many centuries chosen, and the majority, at this hour continue to chuse a form of government partaking of the democratical, aristocratical, and monarchical; for \* "these three species of government have all of them their several perfections and imperfections: democracies are usually the best calculated to direct the end of a law; aristocracies to invent the means, by which that end shall be obtained; and monarchies to carry those means into execution; and the ancients, as was observed, had, in general, no idea of any other permanent form of government, but these three; for though Cicero †

\* Blakist. Introd. to his Comm. p. 50, in the quarto edition.

† In his Fragments de Rep. c. ii.

declares

declares himself of opinion, "*esse optime constitutam rempublicam, quæ ex tribus generibus illis, regali, optimo, et populari sit modicè confusa*;" yet Tacitus treats this notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a visionary whim, and one, that if effected could never be lasting or secure \*.

The ideas of the ancients concerning a mixed government.

"But, happily for us of this island, the British constitution has long remained, and I trust will long continue, a standing exception to the truth of this observation. For, as with us the executive power of the laws is lodged in a single person, they have all the advantages of strength and dispatch, that are to be found in the most absolute monarchy; and, as the legislature of the kingdom is entrusted to three distinct powers entirely independent of each other; first, the king; secondly, the lords spiritual and temporal, which is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property; and, thirdly, the house of commons, freely chosen by the people from among themselves, which

Exemplified in our own.

\* Cunctas nationes et urbes, populus, aut primores, aut singuli regunt: delecta ex his et constituta reipublicæ forma laudari facilius quam evenire; vel, si evenit, haud diuturna esse potest. Ann. l. 4.

makes it a kind of democracy; as this aggregate body, actuated by different springs, and attentive to different interests, composes the British parliament, and has the supreme disposal of every thing; there can no inconvenience be attempted by either of the three branches, but will be withstood by one of the other two; each branch being armed with a negative power, sufficient to repel any innovation, which it shall think inexpedient or dangerous. Here then is lodged the sovereignty of the British constitution; and lodged as beneficially as is possible for society."

It is not only allowed by our own authors, which is very natural, but also by all foreign writers, who have treated upon the constitution and laws of England, that the mixed form of our government gives it a decided preference over every other government ancient or modern. The first part then of our constitution, which comes under my consideration, is the investiture or *deposit of the supreme legislative power*, with the fiduciary delegates of the community; and when I do this, I recede in no degree from the principles I have already laid down; nor am I conscious or apprehensive, that they *tend to the utter subversion, not only of all government, in all modes, and to all stable securities to rational,*

tional freedom, but to all the rules and principles of morality itself. On the contrary, from them alone can I trace a principle of coercion and coercion over the multitude. But before I enter minutely upon each separate branch of the legislature, it will be requisite to form a just and precise idea of the nature and general effects of this commission, or gift of power to them all jointly : we have, I hope, proved, that it was done by the consent and approbation of the community ; and I have not as yet met with any writer, who has attempted to prove, that the hereditary peers of this realm, or a given number of elected commoners possess any particle of legislative authority, independently of the community. Many indeed have, by deducing the royal power and prerogative immediately from Almighty God, attempted to place the king above and wholly independent of the community. The proper place for examining this doctrine will be, in considering the rights, powers, and prerogatives of the king ; I shall, however, for the present presume, what I hope hereafter to prove, that as the law makes and qualifies the king, and the nation or community makes the laws, so the king cannot be wholly above nor independent of the laws or the community.

The foregoing principles produce coercion over the people.

When



When I say, that all the political power, which is possessed by the king, lords, and commons in this nation, is the free gift of the people, in the same breath I admit, that by this gift the constitution and government of this country are brought to the highest possible degree of perfection, of which any human institution of this nature is capable. Superficially, indeed, must they view this investiture of power, who fancy, because the power is a trust, that *magistrates therefore have duties, but no rights*. The perfection of a gift depends not only upon the excellency of the boon, but also upon the efficacy of the means, by which the receiver is enabled to defend, preserve, and improve the enjoyment of it. I have before said, that the community can only act for its welfare and preservation; and it is truly admirable to contemplate the wisdom and sagacity, with which, by our constitution, each branch of the legislature is enabled to defend and preserve the rights and powers, which have been respectively delegated to them. The object of this delegation of power was, to render the dissolution of the government as difficult as possible; and the perfection of its execution is that stupendous equipoise of power, that renders it almost morally impossible, that one branch of  
the

The delegation  
of power gives  
rights, as well  
as duties;

and prevents  
the dissolution  
of government.

the legislature should out-balance another. Thus do we observe, from experience, that whatever be their derangement in a temporary convulsion of the state, they are sure to return, with peace and order, to their ancient level. And as in nature, the serene sunshine, which immediately succeeds a storm, adds peculiar lustre to the objects, which it irradiates, so most disturbances in our state have terminated in adding light and vigour to our constitutional rights and liberties. This is the halcyon view of our political constitution, which Dr. Kippis represents immediately after the revolution of 1688: \* “ To be favoured with a form of government, of which liberty is the basis, is the greatest of all temporal blessings; and the nations, on which so noble a gift has been bestowed, appear with peculiar glory in the history of the world. It has been the happiness of Britain to possess this benefit in a high degree of perfection. The system of our government is not singly a democracy, an aristocracy, or a monarchy; but an excellent composition of the three. It adopts the advantages of these several schemes, and rejects their inconveniencies; it assumes the equality of a de-

Pleasing view  
of our constitution,  
by Dr.  
Kippis

\* Dr. Kippis's Sermon preached at the Old Jewry on the 4th of Nov. 1788, p. 24, 25.

mocracy,

mocracy, without its confusion ; the wisdom and moderation of an aristocracy, in some respects, without its severity in others ; and the vigour of a monarchy without its tyranny ; and it admirably provides for the distinct exercise of the judicial authority. Hence, it presents a plan of power, which produces more true freedom, than perhaps has yet been enjoyed by any community, in any period."

The rights, which attended this donation or investiture of power, I shall endeavour more particularly to illustrate, when I separately consider each branch of the legislature. I shall first, however, beg leave to premise some leading observations, concerning the revolution and its principles and effects. As a member of the *contented* majority of this community or nation, I must from henceforth view and consider the supreme legislative power completely vested in our parliament ; and in them am I to seek the unalienable rights of the people, whom they completely represent ; for in them the sovereignty of power to alter, change, amend, and improve the constitution and government of the community indefeasibly resides. Whatever mental objections I may conceive against the truth of this proposition, as a member

The right of the legislature to alter the government.

member of the community I am bounden, under the penalties of high treason (and the community have a right to bind me) to keep my opinion to myself: \* “ if any person shall, by writing or printing, maintain and affirm, that the kings or queens of this realm, with and by the authority of parliament, are not able to make laws and statutes of sufficient validity to limit the crown, and the descent, inheritance, and government thereof, every such person shall be guilty of high treason.” This act is as coercive upon me at this moment, as it was binding upon all my predeceffors, who were living at the time of its passing into a law. The act neither gives nor declares any new rights, but emphatically imports such a reverential and awful conviction, that the supreme or sovereign right and power of forming and changing our government, ever did and ever must reside in the people, that makes it treasonable (not to think) but to express a thought to the contrary.

High treason to deny it.

\* 4th Ann, c. viii. and 6th Ann, c. vii.

## C H A P. VIII.

OF THE REVOLUTION, AND OF ITS PRINCIPLES  
AND EFFECTS.

**T**HE avowal of the principles, which I have already endeavoured to establish, induces the mortifying necessity of arguing upon the revolution, in a manner different from that great personage, whose talents and virtues are the ornament and glory of the present age : \* “ They threw a politic well wrought veil over every circumstance tending to weaken the rights, which, in the meliorated order of succession, they meant to perpetuate, or which might furnish a precedent for any future departure from what they had then settled for ever.” No wonder that the malcontents of the present day, when not permitted to attribute effects to their real causes, should fly into any extravagancy, which can be proposed to them. Unlimited is the mischief of not avowing, or of denying or dissembling true principles. I neither see the policy, nor admit of the ne-

Mischief of denying or dissembling true principles.

\* Mr. Burke's Reflections on the Revolution in France, p. 25.

cessity of putting extreme cases to elucidate the truth of our constitutional doctrine ; but, though I make the largest allowances for the indelicacy, the indiscretion, the imprudence, the insolence, or the malice of this practice, still do I see less evil in the consequences, than in one attempt to deny or dissemble the truth of the first principles of civil government.

Since this nation or community has deposed its sovereign power with parliamentary deputies or representatives, there can be no act of parliament, which is not the act of the people of England ; nor can there be an act of the people of England, which is not an act of the parliament of England ; whatever, therefore, may be said of the one, may also with strictness be said of the other. If therefore this sense and meaning be properly attended to, little offence, or even displeasure, can be taken at most of the propositions, that have been lately hazarded by the different leaders and fomenters of the discontented minority. Thus, if we come truly and impartially to consider the three rights, which Dr. Price reminded his audience, at the Old Jewry, were gained by the revolution, we shall find nothing false in his politicotheologic assertion, but that *we gained them*

Acts of parliament the only acts of the people of England.

The revolution gave no new rights to the community.

*them by the revolution*; for the revolution gave no rights to the community, which the community did not before possess; but, by affording an opportunity of calling these rights into action, like all other practical examples, it threw light upon the principles, from which the rights themselves originated.

How Dr. Price's propositions are to be understood.

The first of these is, the *right to liberty of conscience in religious matters*. I have before said, and, I hope, to the conviction of my readers, that this is a right possessed by every individual in such a transcendent and indefeasible manner, that he essentially holds it independently of the community. The second is *the right of resisting power when abused*. Having before shewn, I hope also to the conviction of my readers, that all political power given or delegated by the community, is a trust, and consequently limited within certain bounds, it is evident and clear, that the community cannot be bound to submit to any excess of power, which they themselves have not assented to. This assent is formally given by every one, who continues to remain a member of that community, which delegated the power to the parliament; and it is this assent, that constitutes the original compact between the governors and governed. The actual limitation of any political

political power, is a metaphysical demonstration that it originated from, and depends upon a superior, who formed the limits. The transgression of these limits is a violation of the trust; it is either usurpation or tyranny, and consequently a direct breach of the original compact on the part of the governors; the governed cease to be bound to a power not assented to by them; there arises then a dissolution of the government, and the people have a right to resist the exactions of this assumed or usurped authority.

The third of these rights, which Dr. Price represents as gained or obtained by the revolution is,\* *The right to chuse our own governors, to cashier them for misconduct, and to frame a government for ourselves.* The general substance of these propositions is certainly true; but the method, which this zealous apostle of liberty has adopted to convey the truth to his

\* Dr. Price, in the same sermon, p. 35. "I would further direct you to remember, that though the revolution was a great work, it was by no means a perfect work; and that all was not then gained, which was necessary to put the kingdom in the secure and complete possession of the blessings of liberty. In particular, you should recollect, that the toleration then obtained was imperfect; it included only those, who could declare their faith in the doctrinal articles of the church of England."



congregation, I must own, is rather of an insidious nature, and without judging very rashly, we may be allowed to think it calculated to inspire his auditors with a discontented contempt for their governors, and excite them to an attempt to alter or subvert the present system and form of government. Whereas, since, as Milton says, *the institution of magistracy is jure divino*, I think I need not use argument to prove, that it is emphatically the duty of the ministers of God, to enforce from his sacred tribunal, the obligation of submitting to their authority. And, indeed, it must in justice be allowed, that this political evangelist does not leave his pulpit, without shewing to his congregation, that he is fully aware of this first duty of his station.

Deference and  
homage due to  
civil magistrates.

\* “ There is undoubtedly a particular deference and homage due to civil magistrates, on account of their stations and offices ; nor can that man be either truly wise, or truly virtuous, who despises governments, and wantonly *speaks evil of his rulers* ; or who does not, by all the means in his power, endeavour to strengthen their hands, and to give weight to their exertions in the discharge of their duty. *Fear God*, says St. Peter. *Love the brotherhood. Honour all men. Honour the*

\* Dr. Price's Sermon, p. 27.

king. You must needs, says St. Paul, *be subject to rulers, not only for wrath* (that is, from the fear of suffering the penalties annexed to the breach of the laws), *but for conscience sake. For rulers are ministers of God, and revengers for executing wrath on all that do evil.*" Were the whole tenor of Doctor Price's discourse conformable with this part of it, no other than the most desirable effects could have been produced by it; and in the encreasing duty and submission of his flock to the powers placed over them, would the fruits of their loyal pastor's address be discovered.

Mr. Locke, in the preface to his *Treatise upon Civil Government* says; \* " he allows its just weight to this reflection, that there cannot be done a greater mischief to prince and people, than the propagating wrong notions concerning government, that so at last, all times might not have reason to complain of the drum ecclesiastic." Now, if the congregation assembled at the Old Jewry understood and felt, as well as their pastor, that by the words, *our own* and *ourselves*, were meant and intended the whole community, completely represented by the king, lords, and commons, the first and third part of this

\* P. 105, vol. ii. of the folio edition.

last assertion, viz. *the right to chuse our own governors, and to frame a government for ourselves*, are certainly true, and it would be treasonable to deny them openly. The second part of the assertion cannot be said to be false, though, from the improbability of its taking effect, it becomes childishly absurd. It certainly is within physical possibility, though without moral probability, that a king of England should give the royal assent to an act of parliament for cashiering himself for misconduct; for in the present constitution of our government, there can be no act of the people, which is not an act of parliament; nor any act of the parliament, which is not the act of the people. Now, although in this proper *true* political sense the doctrine of Dr. Price be strictly true, yet, from the manner, in which the truth appears to have been conveyed, or represented to his congregation, I cannot help concluding, that most of them came from the Old Jewry fully satisfied (as indeed they probably went thither), that these boasted rights were possessed, and might at all times be exercised by those particularly, who dissented from our ecclesiastical, and were discontented with our present civil establishment. It was rather insidious, to soothe them with this flattering display of rights, and not

The true political sense of Dr. Price's propositions.

Rights of the community represented insidiously, as the rights of every individual.

at

at the same time inform them, that they never could be exercised, but by the act of the majority of that community, of which they were avowedly a very decided minority; and that they were moreover amenable, collectively and individually, to the full rigour of the laws, for resisting or opposing in any manner the acts of the majority; any idea, therefore, of a personal enjoyment of these rights, in consequence of our own judgments, was delusive and mischievous in the extreme; and the idea of cashiering our governors for misconduct, which in most minds would implant the previous idea of a right of personal condemnation, superadds to the delusion and mischief a sense of indelicacy, little congenial with the deference and respect, which our constitution enjoins every one to pay to the supreme governor of the state. I perhaps understand these three assertions of Dr. Price differently from the generality of his congregation; but, probably, not differently, from himself; for he expressly and truly says, \* “ Were it not true, that liberty of conscience is a sacred right; that power abused justifies resistance; and the civil authority is a delegation from the people, the revolution

\* Dr. Price's Sermon, p. 34.

would]

would have been, not an *assertion*, but an *invasion* of rights ; not a *revolution*, but a *rebellion*."

There is one more passage in this much canvassed sermon, which has given the highest offence to Mr. Burke. \* " All things in this fulminating bull are not of so innoxious a tendency. His doctrines affect our constitution in the most vital parts. He tells the revolution society in this political sermon, that his majesty is almost the only lawful king in the world, because the only one, who owes his crown to the choice of his people. This doctrine, (he says), affirms a most unfounded, dangerous, illegal, and unconstitutional position." I think it clear, that Dr. Price, by the words, *owes his crown to the choice of his people*, did not mean, that he owed his high office to any form of popular election, as Mr. Burke insinuates, which would have been notoriously false; but that our sovereign owes his crown and station to the free assent of the people, which is the efficient cause of every free constitution ; and this I take to be true, sound, and genuine revolution doctrine ; and as such was it expressly delivered by Mr. Locke, immediately after the revolution had

The true cause of the king's owing his crown to the choice of his people.

\* Reflections on the Revolution in France, p. 16.

taken effect. \* “ These which remain, I hope are sufficient to establish the throne of our great restorer, our present King William ; to make good his title in the consent of the people ; which being the only one of all lawful governments, he has more fully and clearly, than any prince in Christendom ; and to justify to the world the people of England, whose love of their just and natural rights, with their resolution to preserve them, saved the nation.” In this sense, I profess to see little or no difference between the compliment paid to King William by Mr. Locke, a very great philosopher and an old whig, and that paid to King George the Third by Dr. Price, who by many was esteemed a very great philosopher and a modern whig. And it is very certain, that by far the greatest part of the people of England do now believe and maintain, that both his present majesty and the late king William became entitled to the sovereignty of this community upon those principles, which, from the days of King William have been called *revolution principles* ; not that they were formed, given, or even established by the revolution, but that the revolution was effected by them ; so that the

\* Locke's Preface to his Treatise on Civil Government.

denomination has been borrowed from the effect, and not from the origin or cause. No sovereign in fact from King Egbert to his present majesty, has ever owed his crown to any other, than these identical principles.

Discussion favourable to the cause of truth.

It would be very unwarrantable in me to submit to this sentiment, \* “ *that it has been our misfortune, and not the glory of this age, that every thing is to be discussed.* Wherever misrepresentation of truth has existed, and that misrepresentation has been attended with pernicious consequences, discussion alone can cure the evil. I openly avow this to be the intent of my making this publication; and with this view am I induced to make the most public and unequivocal profession of those principles, which have engendered, nurtured, and matured our constitution; and which, if strictly adhered to, must ever preserve it in full vigour, and so perpetuate it to the latest posterity. I am very far from wishing to draw a veil over the principles, which justified the alterations in the constitution of our government at the revolution; for if that great event had never taken place, and any circumstance had provoked the discussion of the principles, upon which it was formed, I should

\* Burke, ubi supra.

have

have explained and professed them in the same manner, in which I now do.

As well might it be denied, that a revolution in this kingdom existed in the year 1688, as that very essential alterations were at that time introduced into the constitution. It is immaterial to the subject under our present consideration, whether these alterations were prudent to be made, or whether they could be, or were, recommended by each individual of the community. The essential alterations were two: the first was, the alteration in the succession of the crown; the second was the alteration in the tenure of the crown. As for all the other rights, liberties, and privileges, which are commonly said to have been acquired, secured, or confirmed unto us at that period by the bill of rights, or otherwise, it appears evident, from the reflections already offered, that nothing more was in fact gained by the people at the revolution, than an express acknowledgment or recognition by the sovereign, that the people were entitled unto, and might for ever enjoy those rights, to which without any such acknowledgment or recognition, they ever had an indefeasible title, not coeval and co-equal with, but prior to, the sovereign's title to the crown; for the rights of the people pre-

Alterations in the constitution effected by the revolution.

The rights of the people prior to those of the sovereign.

ceded



ceded the original compact, upon which society was formed; and the rights of the sovereign were granted by the community for their better preservation.

Few writers have fairly represented the revolution.

Few writers appear to me to have treated the revolution of 1688 with fair unbiassed candor. Most of them seem to have been checked by a delicate timidity from speaking the whole truth, or avowing the real spirit of the revolution; some of them appear to have been impelled by a restless discontented disposition, to go far beyond the real spirit of the revolution, by facilitating the means, and inventing necessities for a repetition of the scene. None of them appear ever to have sufficiently distinguished between the facts, which occasioned, and the principles, which justified the revolution.

The facts which occasioned the revolution never again likely to recur.

As to the principles, I hope I have convinced my readers, that they are prior to the constitution itself, and fully adequate to every purpose of preserving and improving it, as the exigencies of circumstances and the wishes of the community may require. The facts, which gave rise to the revolution were such, as in all human probability never can again recur in that combination, as to occasion another such revolution upon the strength of precedent. I shall therefore consider a repe-

repetition of such an event, as amongst the moral impossibilities. In speaking with freedom of this great event, I mean not to displease nor offend those, who have viewed and treated it in a light and manner very different from that, in which I shall take the liberty of representing it.

\* “ The constituent parts of a state are obliged to hold their public faith with each other, and with all those, who derive any serious interest under their engagements, as much as the whole state is bound to keep its faith with separate communities.” And this same great man, speaking of the common law and the statute law, says, † “ both these descriptions of law are of the same force, and are derived from an equal authority, emanating from the common agreement and original compact of the state, *communione reipublicæ*, and such as are equally binding on king and people too, as long as the terms are observed, and they continue the same body politic.”

Upon the same principles, upon which the revolution was effected, very important alterations have been formerly made in the

\* Mr. Burke's Reflections on the Revolution of France, p. 28.

† Ibidem.

The reformation and alteration in the constitution before the revolution,

constitution and government of this kingdom, before that event took place. The most material of these alterations was the reformation, or change of the national religion. For upwards of 900 years, the church establishment of this nation was of the Roman catholic persuasion or doctrine; and during that period, it as certainly made a part of our constitution, as the protestant religion makes a part of our constitution at this day, and as it did also in the year 1688; for, as I have endeavoured to prove before, the community must ever retain an indefeasible right of making a civil establishment of that religion, which the majority shall have thought it their duty to adopt; for this duty lies upon each individual independently of the community. King James the Second had adopted the Roman catholic religion, whilst he was duke of York and the presumptive heir to the crown: the apprehensions of the nation were upon this account much alarmed, lest, if the crown should devolve upon a person of that persuasion, some alteration or change would be attempted, and, perhaps effected in their religious establishment, which they esteemed their first and dearest constitutional right and liberty, as being the immediate effect of their own free election.

Apprehensions of the nation for their religious establishment under a Roman catholic prince.

election. Upon this account, they brought into the House of Commons \* “ the famous bill of exclusion, which raised such a ferment in the latter end of the reign of king Charles the Second. It is well known, that the purport of this bill was to have set aside the king’s brother, and presumptive heir, the duke of York, from the succession, on the score of his being a papist; that it passed the house of commons, but was rejected by the lords; the king having also declared before hand, that he never would be brought to consent to it.” From this transaction we clearly see, that our ancestors were decidedly of opinion, that the community, by the act of their representatives, had a right to alter and change the constitution and government, as they should think proper; for the lords did not reject the bill, because they wanted the power of concurring in it, but because they thought it inexpedient, that it should then pass into a law. Hence also may we learn a most *practical lesson* upon the supereminent excellency of our constitution, which, though it has invested the whole legislative body with such a transcendancy of power, that it is now proverbially called *omnipotent*, yet has it so judi-

The bill of exclusion thrown out of the Lords.

\* Blackstone’s Commentary, b. i. c. 3.

Safety in the  
three distinct  
powers of the  
legislature.

ciously counterbalanced the rights, powers, and interests of each component part of that body, that it is never presumed probable, that any act should pass the three branches of the legislature, which does not appear evidently for the advantage of the community, whom they collectively represent. \* “ Like three distinct powers in mechanics, they jointly impel the machine of government in a direction, different from what either, acting by itself, would have done ; but at the same time, in a direction partaking of each, and formed out of all ; a direction, which constitutes the true line of the liberty and happiness of the community.” However, as the bill took no effect, no alteration nor change was then introduced into the old constitutional rule of succession, and king James the Second succeeded to the throne of his ancestors by the common law of the land.

It would be useless, and, perhaps, very impolitic to attempt (although it might be now done impartially) an historical examination of the acts, by which king James the Second provoked the community to declare, that he had *abdicated* the crown, as they declared in England, or that he had *forfeited* it,

\* Blackstone's Commentary, b. i. c. 2.

as they declared in Scotland. Suffice it to say, that such was the sense of the majority of the community, by which the minority was certainly concluded. \* “ For, in a full assembly of the Lords and Commons met in convention, upon the supposition of this vacancy, both houses came to this resolution, *That king James the Second, having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people, and, by the advice of jesuits and other wicked persons, having violated the fundamental laws ; and having withdrawn himself out of this kingdom, has abdicated the government, and that the throne is thereby vacant.*” This learned commentator upon our laws continues thus : † “ The facts themselves thus appealed to, the king’s endeavours to subvert the constitution by breaking the original contract, his violation of the fundamental laws, and his withdrawing himself out of the kingdom, were evident and notorious ; and the consequences drawn from these facts, namely, that they amounted to an abdication of the

The majority  
for the Abdica-  
tion.

\* Blackstone’s Commentary, b. i. c. 3.

† I am happy in quoting the authority of Mr. J. Blackstone, who delivered these commentaries in the form of lectures, as Vinerian professor in the university of Oxford.

government

government, which abdication did not affect only the person of the king himself, but also all his heirs, and rendered the throne absolutely and completely vacant, it belonged to our ancestors to determine. For, whenever a question arises between the society at large, and any magistrate vested with powers originally delegated by that society, it must be decided by the voice of the society itself; there is not upon earth any other tribunal to resort to. And that these consequences were fairly deduced from these facts, our ancestors have fully determined in a full parliamentary convention, representing the whole society. I, therefore, (continues he) rather chuse to consider this great political measure, upon the solid footing of authority, than to reason in its favour from its justice, moderation, and experience; because that might imply a right of dissenting or revolting from it, in case we should think it to have been unjust, oppressive, or inexpedient. Whereas our ancestors having most *indisputably a competent jurisdiction to decide* this great and important question, and having in fact decided it, it is now become our duty, at this distance of time, to acquiesce in their determination, being born under that establishment, which was built upon this foundation, and obliged

obliged by every tie, religious as well as civil, to maintain it." When this learned commentator declines to consider the justice, moderation, and expedience of the revolution, it is clearly waving the examination of the facts, which occasioned it; and when he admits, that our ancestors had indisputably a competent jurisdiction to decide this great and important question, it is an unequivocal avowal of the pre-existence of those principles, upon which it was effected; for if those principles had originated out of the revolution, they could not be said to have justified the revolution of 1688, although they would justify a future revolution, under all similar circumstances, which is scarcely to be presumed within the possibility of human occurrences.

Judge Blackstone waves the examination of the facts which occasioned the revolution;

and avows the principles upon which it was effected.

More than a whole century has now elapsed, since this memorable event was brought about by the majority of the nation, and that concludes the whole; and whatever feeble efforts have during that period of time, been attempted by the Jacobite party, to counteract and subvert the establishment made at the revolution, it can never be pretended, that that party made more, than a very insignificant minority of the community, who consequently were concluded by the acts of the majority, and constitution-

The Jacobites, as the minority, concluded by the acts of the majority.



ally bounden to abstain from such attempts. It is but justice, however, to mark the difference between such individuals, as, following the fortunes of their abdicated sovereign, quitted and renounced the community, (which they had a right to do) and those, who continuing to enjoy the protection and benefit of the community, rebelled against the state, by attempting to force and subject the avowed sense and open acts of the majority to the pretended rights and encroachments of an usurping minority. By the articles of Limerick, the right of transferring their allegiance to a foreign power was expressly stipulated for and granted to those, who should choose on this occasion to quit the community.

The revolution as much the act of those who approve of as of those who planned it.

The revolution is to be looked upon as much (if not more) the act of those, who have ever since approved of it by the adoption and support of the establishment, that was effected by it, than of those, who first planned and brought it to bear. And I have too *respectable* a deference for the English nation, to charge them with having, as jurymen, brought in a false verdict, by finding against the matter of fact, which occasioned the revolution, or with having, as judges, pronounced against the point of law, by condemning

demning the principles, upon which it was effected. I should not hold myself justifiable in drawing a veil over the one or over the other. I most strongly, therefore, reprobate the idea of the rights of the people of England being weakened by any of the circumstances \* that attended the revolution, or that any possible act of the legislature could render the principles, upon which the revolution was effected, less operative in future than they had before been.

The before mentioned declaration by the national convention of the circumstances, that on this occasion summoned them to the exercise of their inherent and indefeasible rights, which I call the verdict of the nation, so far from being calculated to suppress or dissemble the matter of fact, appears to have been worded with the most cautious intention of handing down to the latest posterity a full and faithful statement of the facts, which induced *them* to make, and would induce posterity to approve of and support these alterations in the constitution and government of the country. They make this exposition, or rather boast, of the *circumstances, as tending to vivify and confirm, not to*

Our ancestors were anxious to deliver down their reasons for effecting the revolution.

\* Mr. Burke's Reflections on the Revolution in France, p. 25.

*weaken the rights, which, in the meliorated order of succession, they meant to perpetuate ; and the acts, which they engrafted upon this declaration, are the strongest evidence of our ancestors' wishes to keep alive and active the principles, upon which they passed them. Some persons may also formerly have been prepossessed of the idea, that the revolution was \* " an act of necessity, in the strictest moral sense, in which necessity can be taken ; and that it should never † furnish a precedent for any future departure from what they had then settled for ever." Through fear and anxiety therefore, lest in these prepossessions the genuine principles of the revolution might merge and become extinguished, the nation at different times has taken the most effectual means to perpetuate the spirit and principles of the revolution to their latest posterity, whom they endeavoured at the same time by all possible means to secure against the occasions of calling them into action.*

It appears from history, that during the reign of queen Anne, many complaints were made by the bishops in particular, of the increase of Dissenters, and of the licentious and rebellious doctrines preached by several

\* Burke, ubi supra.

† Ibidem.

of the clergy; by which they would infer, that the church of England was brought into great danger: and very strong attempts were made from the pulpits and elsewhere, to inculcate into the people Tory principles and doctrines, which militated directly against those Whig principles, upon which the revolution was brought about and established. These matters were warmly debated in the house of peers; \* and Lord Somers took a leading part in them. These persons, as Mr. Burke observes, § “ had many of them an active share in the revolution, most of them had seen it at an age capable of reflection. The grand event and all the discussions, which led to it and followed it, were then alive in the memory and conversation of all men.” The public steps, which were then taken by the nation, were probably suggested and recommended by Lord Somers, and they certainly were not grounded upon the idea *of our having renounced any rights at the revolution*; on the contrary, they were adopted for the express and avowed purposes of keeping alive the genuine constitutional principles, upon which the right of the people to alter

Attempts to abolish the revolution principles, by the propagation of tory principles.

Declaration of the nation that the revolution principles were neither prejudicial to church or state.

\* Vid. Hist. and Proceedings of the House of Lords, vol. ii. p. 154. & seq. 4 Anne.

§ Appeal from the New to the Old Whigs, p. 55.

the

the succession and government was exercised at the revolution, and upon the presumption, that the church of England could not be brought into danger by the propagation and maintenance of those principles.

The first of these steps was the introduction of the before mentioned clause into the act (4 Ann. c. viii.) *for the better security of her majesty's person and government, and of the succession to the crown of England in the Protestant line*, which makes it high treason to deny to the people, by their representatives in parliament, the right or power to limit, as they should think proper, the descent, inheritance, and government of the crown. The second was the royal proclamation made on the 20th Dec. 1705, in consequence of and in order to publish to the nation the joint vote of both houses of parliament, *that the church was not in danger*. And the proclamation contains her majesty's declaration, that she would proceed with the utmost severity the law should allow of, against the authors or spreaders of such seditious and scandalous reports. In the sixth year of her said majesty's reign, after the union, this clause of high treason for denying the right of parliament to new model the succession,

was

was again enacted and extended to Scotland.

After these two solemn acts of the nation, it should seem, that nothing was left to be done, in order to give permanency and vigor to the principles, upon which the revolution was effected. \* “ It rarely happens to a party to have the opportunity of a clear, authentic, recorded declaration of their political tenets upon the subject of a great constitutional event, like that of the revolution. The Whigs had that opportunity, or, to speak more properly, they made it. The impeachment of Dr. Sacheverel was undertaken by a Whig ministry, and a Whig house of commons, and carried on before a prevalent and steady majority of Whig peers. It was carried on for the express purpose of stating the true grounds and principles of the revolution, what the commons emphatically called their *foundation*. It was carried on for the purpose of condemning the principles, on which the revolution was first opposed, and afterwards calumniated, in order, by a juridical sentence of the highest authority, to confirm and fix Whig principles, as they had operated both in the resistance to king James,

Sacheverel's trial instituted for the direct purpose of manifesting the true spirit of the revolution.

\* Appeal from the New to the Old Whigs, p. 54, 55.

and

and in the subsequent settlement ; and to fix them in the extent, and with the limitations, with which it was meant they should be understood by posterity." Without going into the particulars of the trial of Doctor Sacheverel, we shall find sufficient in the preamble to the articles of impeachment exhibited against him by the commons, to enable us to form a complete judgment upon the general intent and design of bringing on this trial. Such confidence and such glory did our ancestors place in these principles, that instead of drawing a veil over them, they seemed to have adopted, by bringing on this trial, the most effectual method possible of submitting them to the severest ordeal of minute and public investigation.

After reciting that the revolution had actually taken place, to the great happiness of the realm, and that the said glorious enterprise had since been approved by several acts of parliament, \* the preamble sets forth  
more

\* Viz. by an act made in the first year of the reign of king *William* and queen *Mary*, entitled, *An act declaring the rights and liberties of the subject, and settling the succession of the crown* ; and also by one other act made in the same year, entitled, *An act for preventing vexatious suits against such as acted, in order to the bringing in their majesties, or for their service* ; and also by one other  
act

more particularly the happy and blessed consequences of the revolution; and that, notwithstanding, Dr. Sacheverel had, in two sermons, which he preached and published, attempted, by a "wicked; malicious, and seditious intention, to undermine and subvert her majesty's government, and the Protestant succession, as by law established, to defame her majesty's administration, to asperse the memory of his late majesty, to traduce and condemn the late happy revolution, to contradict and arraign the resolutions of both houses of parliament, to create jealousies and divisions amongst her majesty's subjects, and to incite them to sedition and rebellion."

The solemn judgment of the house of peers against Dr. Sacheverel must, in my opinion, make it absolutely unlawful for any British subject, in future, openly to deny or disapprove of the revolution principles, or publicly to maintain those, which are commonly called the Tory principles.

In the line of morality or policy, no action can be justified that is not reducible to some

act made in the same year, entitled, *An act for appropriating certain duties for paying the states general of the united provinces their charges for his majesty's expedition into this kingdom, and for other uses; and the assings of the said well-affected subjects in aid and pursuance of the said enterprise.*

The judgment against Dr. Sacheverel makes it unlawful to maintain publicly tory principles.

true



true principle ; I have, therefore, endeavoured to shew, upon what principles the revolution was effected, and upon what principles its consequences are still cherished and maintained. But as in all political disquisitions, this memorable event is constantly resorted to by all parties, even for the most opposite purposes, I shall attempt to delineate its naked portrait, without the incumbrance or disguise of the slightest drapery. The nearer we approach to truth, the more our ideas become simplified. Although it be true, that the act of the majority of a community must ever conclude and bind the whole ; yet it is not to be supposed, that even the unexceptionable and universal assent or act of any society of human beings, is necessarily free from the effects of those passions, to some of which each one of the community is liable. When I speak of the binding effect or coercive obligation of these acts, I speak only of such moral or indifferent acts, as each individual would, independently of the community, be at liberty to perform.

The right and obligation of individuals, and of the community, to adopt what they think the true religion.

Wherever the end is lawful, the necessary means to attain that end are also lawful. As each individual has not only the transcendent and indefeasible right, but also the strictest moral obligation of adopting that form

form of religious worship, which he thinks most agreeable to his Creator, so have the community collectively, both the same right and the same obligation; and whenever the majority of the community shall have so concurred in the adoption of a religion, the maintenance and preservation of it stand upon the same principles of right and obligation. At the time of the revolution, the majority of the community did, as at this day they do, hold the free enjoyment of the Protestant religion, as their first and most important liberty: they knew themselves to be under a Roman Catholic sovereign; and their rooted dislike to that religion made them look upon every imprudent exertion, as well as illegal stretch of the prerogative, as a direct attempt to introduce and establish what they called *Popery*, upon the destruction and ruin of the Protestant religion. Whether this judgment of our ancestors were true or justifiable, it matters little for me to examine; it certainly was the judgment of the majority, and, therefore, if any individuals did not choose to submit to its effects, they had the liberty to quit the society, but not to resist or oppose the act of the majority. \* “The idea,”

The dislike and fears of Popery the real immediate cause of the revolution.

\* Black. Com. b. i. c. 3.

says

The nation formerly in the habit of never separating the idea of a Popish prince from that of a tyrant.

says Judge Blackstone, "that the consciences of posterity were concerned in the rectitude of their ancestors decisions gave birth to those dangerous political heresies, which so long distracted the state, but at length are all happily extinguished." This judgment was the natural result of the associated ideas of Popery and tyranny; and it is notorious, though singular, that the majority of the nation at that time had been educated in the habits (as may be judged from the language of the statutes) of never separating the idea of a Popish prince, from that of an arbitrary, unjust and wicked monarch.

The bill of rights being uncontrovertibly the act of the nation, specifies the charges, which the nation had found against king James the Second \*, which are all reducible to

\* Whereas the late king James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom :

1st, By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2d, By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

3d, By issuing and causing to be executed a commission

to his attempt to establish his own upon the subversion or extirpation of the Protestant religion. And if we are to judge of the peccant part, by the application of the remedy, we clearly see, that the only innovations or changes, that were then introduced into the constitution and government, were directly calculated to prevent the future possibility of that happening, against which the constitution and laws had not then provided a security.

The first of these changes was the limitation of the crown to the Prince of Orange and the Princess Mary his wife, with divers

Change in the limitation of the crown.

mission under the great seal, for erecting a court, called *the court of commissioners for ecclesiastical causes*.

4th, By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.

5th, By raising and keeping a standing army within the kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6th, By causing several good subjects being Protestants, to be disarmed, at the same time when Papists were both armed and employed, contrary to law.

7th, By violating the freedom of election of members to serve in parliament.

8th, By prosecutions in the court of King's Bench, for matters and causes cognizable only in parliament, and by divers other arbitrary and illegal courses. Vid. Bill of Rights, 1 W. & M. sess. 2. c. 2.

remainders

remainders or limitations over, to the absolute exclusion of the late king James the Second and his heirs, which was the line of succession fixt and sanctioned by the constitution of this realm, ever since it had made the crown hereditary. So determinately cautious were the nation, that the crown should never more devolve upon a Roman Catholic, that in the largest stretch of the power, which they certainly did possess, they for ever excluded the old legal and constitutional heirs to the crown, whether they should profess that religion or not. Thus making this abdication or forfeiture of James more than personal, by extending it to the unoffending issue of his body begotten and to be begotten.

Change in the  
tenure of the  
crown.

The second change was the tenure of the crown of England: for the act expressly enacts, "And whereas it hath been found by experience, that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a Popish prince, or by any king or queen marrying a Papist, the said lords spiritual and temporal, and commons, do further pray, that it may be enacted, that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with the see or church

church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm and *Ireland*, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases, the people of these realms shall be, and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons so reconciled, holding communion, or professing or marrying as aforesaid, were naturally dead."

By this act we see that the community not only asserted. but exercised their right to alter and change the constitution and government of this country, as they chose; for to pretend that this alteration in the succession and tenure of the crown were not absolute innovations and essential changes in the constitution, would be to prove the futility or incompetency, not only of this bill of rights,

The community exercise their right to change the constitution and government.

rights, but of every statute, that has been passed in this nation since the revolution.

As to all the other complaints, which by that act the nation makes of former abuses or encroachments made or attempted by the crown, they do not bring home the charges particularly to king James; but assert generally, that they were made or attempted in open and direct violation of the ancient indefeasible rights and liberties of the people. And therefore the operative part of that statute, which relates to those rights and liberties, does not enact any thing new by way of grant, or even confirmation of those rights and liberties to the people, but it consists of these singular words: *They do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties.* From hence, I think, I am fully justified in concluding, that the immediate cause of the revolution in 1688, was the dislike, which the nation had to the religion of their sovereign; as in fact the only innovations or changes then introduced into the constitution and government, were the immediate means adopted by the nation of preventing their future subjection to a Roman Catholic sovereign. The inherent rights and incumbent

The only alterations at the revolution were made to prevent the descent of the crown upon a Roman catholic.

incumbent duties of individuals and of the community, of which I have before spoken, will when candidly viewed, I hope, sufficiently justify, and for ever establish the principles, upon which our ancestors effected the revolution, and their posterity to this day cherish and support it in its consequences and effects.

I shall close this preliminary digression by a reflection, that arises naturally out of the combination of what I have already said. All those of the present dissenting minority, who have hitherto avowed their sentiments either by word or writing, acknowledge the necessity of some civil or political government, though they may wish the government of this country very different from what at present it is. Now no civil or political government can subsist without some efficient and coercive civil or political authority; but all civil or political authority is proportionably efficient and coercive, as the members of the society are compellable to submit to it; and the members of any society will be more or less amenable and submissive to their magistrates, according to the degree of right, which they allow to their jurisdiction. If the power or authority of the magistracy has been imposed upon the

Efficient coercive power of government.

O

community



community by external force or any sort of compulsion, the submission to it cannot be expected to survive the compulsive exactions of this tyrannical power, to which no free assent is given; and where there is no free assent in the governed to submit, there can exist no right in the governors to rule, as is evident; for all lawful government is a compact between the governors and governed, which necessarily involves the freedom of the contracting parties.

The intent of toryism was to enforce subordination.

Failure in the means.

The chief end, which the high-flying zealots for kingly power in the zenith of toryism had in view, in deducing it immediately from Almighty God, was, I presume, the more strongly to enforce the obligation of submitting to it. Much praise is due to them for their wishes and intentions to establish subordination to the powers in being; but little credit can be allowed them for the selection of the means, which they applied to the end. For, in the first place, it was an immediate provocation to their opponents to call for their divine commission, which I have as yet never found made out to any earthly sovereign since the immediate divine appointments of some theocratic rulers of Israel. This primary defect of title in those, who rested the right upon this ground, necessarily

cessarily increased the unwillingness of their opponents to submit to it.

In the next place, it was highly injudicious in them to hold out the precious pearl of divine authority to those, who either did not know its value, or would not acknowledge its virtue and efficacy; for to a person, who submits with unreserved sincerity to the indispensable obligations of the divine ordinances, it can matter but little, whether the obligation be imposed upon him mediately or immediately by Almighty God. So in the case of this question of difference, one party submitted to the obligation of the divine ordinance to obey our rulers, because they held that Almighty God had delegated his power to them immediately; the other party held, \* “that the institution of magistracy is *jure divino*, and the end of it is, that mankind might live under certain laws, and be governed by them; but what particular form of government each nation would live under, and what persons should be entrusted with the magistracy, without doubt, was left to the choice of each nation.” Little therefore did it matter, since both parties agreed, that magistrates or rulers were to be obeyed and submitted to by the divine ordinance, or *jure divino*, whether that power, to which we were

The ordinances of God equally binding, whether mediately or immediately communicated to us.

\* Milton, ubi supra.

so commanded to submit, were vested in them by the immediate appointment of God, or by the intermediate appointment of the people, to whom God had given the power and right to choose what persons should be entrusted with the magistracy.

No one, who allows any binding force to divine authority upon earth will pretend, that the commandments of the old law, or the evangelical precepts of the new, lose any degree of their binding obligation, because they were imposed upon mankind through the intermediation of Moses and the Apostles. We see from too fatal experience of our own history, how ineffectual the *jure divino* institution of magistracy was to protect the sacred person of the first magistrate appointed and acknowledged by the people, against the rebellious and murderous hands of that party, whose avowed champion the \* assertor of this very doctrine was. If therefore we are to seek an authority or power upon earth, to which all such persons would actually submit, we must derive it from the people or community, of which they are a part; for no man can consistently refuse subjection to the power, which he has himself given, recognized, and established; because this gift of power or authority by the people

The part which each individual has in the legislature, enforces the obligation to submission.

\* Milton.

to

to the political magistracy or legislative authority of the state, is in fact nothing more nor less, than the actual agreement of the majority of the community, which binds each individual unexceptionably to submit unto it; no one therefore can invalidate or do away his own act, which confers a right upon others; and magistrates have rights as well as duties. In fact, the whole community has by this assent of the majority, a collective right to the subjection of each individual of its members. Thus, if the right to civil power be established upon its true basis, the obligation of submitting to it will become indispensably binding upon all men, whether they be impelled to it by their moral duty to their Creator, or by the mere civil effects of the social contract, by which they remain members of the community.

Before I enter immediately upon the consideration of each separate branch of the legislature, I cannot suppress a general conclusion which arises out of what has been already offered; for it is peculiarly incumbent upon me to prove to the conviction of my readers, that the *sovereignty of all power not only originated from the people, but continues unalienably to reside with them.* Since the first institution of civil or political government  
upon

upon earth, there never existed, in my opinion, an instance, in which the transcendency of this sovereign right in the people was so clearly demonstrated, as in our revolution of 1688. For in that temporary dissolution of the government, which was occasioned by the abandonment or dereliction of it by the executive power, the people in reality and practice, carried their rights to an extent far beyond the speculative allowances of the most unconfined theorists. So well satisfied were they of the general tenor of the constitution and government, that to such parts, as they did not think fit to change and alter, they very wisely endeavoured to add strength, vigour, and authority. But imagination cannot conceive a greater stretch of human power, than to make the king's choice of his own religion (a right which every man possesses independently of the community) the immediate cause of his deprivation of all those benefits and advantages, which the community had settled upon him, and which he and his ancestors exercising that same religion, had for many centuries enjoyed in consequence of such settlement: nay, even to such extent did they carry their power, that they excluded the whole line of his immediate successors, not for their actual exercise of

The changes made at the revolution the strongest possible cause of the power of the people to change their government.

of this first right of man, but because they might by possibility exercise it in the same manner, in which their progenitors had chosen to do it before them. They did not attempt to check, nor forbid, nor prevent the personal adoption or exercise of religion in the individual ; but as there could be no sovereignty enjoyed by any one, without the free consent of the community, so the community determined, that no one, who should in future choose to adopt and follow the Roman Catholic religion, should be capable of enjoying the crown of this realm. The absolute deviation from the constitutional rule of hereditary succession, by the exclusion of King James and his heirs, though the nation, for regulating the future succession of the crown, resorted to a common stock from a remoter heir of the Stuart family, was the most irrefragable proof, that could be given of the right to alter the succession. And certainly it cannot be denied, but that it was an innovation in the constitution to make the renunciation of a certain religion the *sine quâ non* condition of inheriting the crown ; otherwise it could not have descended upon King James the Second, and the few years of his reign must be erased from the annals and statute books of this realm.

In

When violent measures become necessary, art is requisite to carry them into execution.

In the heat of the times, in which the majority of this community chose to carry the exercise of their rights to such an extraordinary extent, it certainly became necessary policy in the active ministers of the nation's wishes and intentions, to carry them into execution in a lenient and palatable, if not artful manner. Thus, from not sufficiently distinguishing between the rights of the people, which were exercised at the revolution, and the measures of the ministers in carrying them into execution, have arisen most of the contradictory judgments and opinions formed by posterity in the complex of that great and memorable event. \* " From these views arose that repugnance between the conduct and the language of the revolutionists, of which Mr. Burke has availed himself. Their conduct was manly and systematic; their language was conciliating and equivocal; they kept measures with prejudice, which they deemed necessary to the order of society; they imposed on the grossness of the popular understanding, by a sort of compromise between the constitution and the abdicated family; they drew a politic well-wrought veil, to use the expressions of Mr. Burke,

\* Mackintosh, p. 298, and 299.

over the glorious scene, which they had acted ; they affected to preserve a semblance of succession, to recur for the objects of their election to the posterity of Charles and James, that respect and loyalty might, with less violence to public sentiment, attach to the new sovereign." In forming our thoughts and judgment upon this great event, it never must be forgotten, that at the time, when the convention of the two estates, on behalf of the majority (which is equivalent to the whole) of the community, called King William to the throne, and recognized him as their sovereign, there was an actual dissolution of government, occasioned by the flight and abdication of King James, who may perhaps with more strictness be said to have dissolved, than to have violated the original compact between the governor and the governed ; for wherever one of two contracting parties withdraws or recedes from the condition and obligation of the contract, there the contract of itself ceases.

Actual dissolution of government by the abdication of King James.

It cannot be denied, but that all the writers upon this subject, who were living at the time of the revolution, have either, on the one side or the other, been guilty of some partiality. At this time of day, I will not even suppose the possibility of any such undue bias bearing

Most writers partial upon the revolution.



ing upon the mind of any man, who undertakes to consider and view that transaction in a mere historical point of view.

It would exceed my intent and purpose, were I to undertake either to justify or approve of every act of resistance in any of the people against the commands of their sovereign, from the accession of king James the Second to the time of the revolution, or to blame and condemn the several acts of the sovereign, which provoked such resistance. It is evident from observation, that a long series and combination of acts may produce and even justify a consequence, which no one single act of the whole would of itself have produced or justified: I shall not therefore argue upon any of the actions, either of the sovereign or of the nation, during the short reign of this unfortunate monarch, But when the circumstances and situation of the nation had, as it were, collected into one focus all the counteracting efforts of the opposite parties, there arose that necessity for decision in acting, that rendered every future act, either of the sovereign or the people, in their respective political capacities, absolutely conclusive.

In 1688 every act of the king or people conclusive.

The old uncontroverted principle, that,  
*Rex datur propter regnum, non regnum propter regem,*

*regem*, will enable us to form our mind very satisfactorily upon this great event. I shall take for granted, what I presume no one will undertake to deny, *viz.* the right and possibility of a king's relinquishing, abandoning, or giving up that power, and those rights, which had been given or deputed to him by the community. Without, therefore, taking into consideration the reasons, motives, or inducements, which brought over the prince of Orange with an armed force into this country, we are to consider, and form our minds upon the conduct and actions of king James the Second, after that prince had once landed. It will not suffice to say, that king James, at that time, and under all circumstances, found himself in a very embarrassed situation; that he had reason to apprehend a general defection of his subjects, and to fear for the personal safety of himself and his family; and that consequently his flight, and abandonment of the kingdom were to be looked upon, not as the acts of a free agent, but as the compulsive measures of the most dire necessity; and therefore that his flight out of the kingdom never can be construed into an actual abdication or renunciation of his sovereignty. It is immaterial also to consider, what part of his subjects were ready and willing to adhere

Personal views  
or motives of  
king James not  
to be considered.

A considerable  
part of the na-  
tion with him.

to

to him and obey his commands. History tells us, that the whole navy of England were likely to remain staunch unto him; nor is there any reason to imagine, that the army, which was commanded by lord Feverham, would have deserted from him; and it is more than probable, that had king James the Second, even at this time, shewn the smallest degree of energy, spirit, or rectitude in governing, he would have prevented the greatest part of the nation from joining with the prince of Orange.

The rights and duties of the king and people reciprocal.

No sort of comparison can be drawn between the rights and duties of a sovereign in his political capacity, and those of a subject in the natural capacity of an individual; for, as I have before observed, the rights of the sovereign are, in fact, the duties of the subject, and the duties of the sovereign are the rights and liberties of the subject. Now no one can deny that the community have in themselves an indefeasible right of preserving their own rights and liberties, and these in our community chiefly consist in the advantages of a limited and efficient monarchy; and if that be by any means done away or abolished, it necessarily induces an actual dissolution of that government, by which the community had agreed to be governed.

Anarchy

Anarchy is allowed by all writers to be the greatest political misfortune, which can befall a state, and the first principle of self-preservation supplies every community with the right and the means of preventing and avoiding it. Attention to this last principle will at one glance develop the necessity, and justify the adoption of the revolution; for at that time the nation was in a state of the most dreadful fermentation, and there could not be a stronger necessity for efficient energy in the executive power of government, in order to allay and counteract the ferment, which threatened the very subversion of the nation. In this critical posture of affairs, every action of the sovereign will be perceived to draw with it the most important consequences; nor can we in passing judgment upon them make any allowances for personal prejudice, or want of judgment, knowledge, resolution, or courage.

The principle of self-preservation supplies the means of preventing anarchy.

I shall not resume the question, whether England or Scotland expressed with more propriety the actual cessation of king James's reign, when the former used the term *abdication*, and the latter *forfeiture* of the crown.

The actual exercise of the executive powers of the supreme magistrate is absolutely necessary for the actual subsistence of the English monarchy;

The cessation of the exercise of the executive power an actual dissolution of government.

monarchy ; if, therefore, king James the Second did, as far as he could, annihilate or even suspend the operation of the supreme executive powers, it must be allowed that he did all that he could to annihilate, for the time at least, the very existence of the English monarchy. We need therefore only to consider in what state this nation would have been, had it been left but for the space of one month in the situation, in which king James endeavoured to leave it ; and we shall from thence be able to form a satisfactory judgment of the rights, which the nation so abandoned had in them to secure their own preservation. He withdrew, in the person of the king, the whole executive power of government ; he called in his writs, which were about to be issued for convening a parliament ; he dismissed his judges ; he threw the great seal of England into the river ; he disbanded the army without pay ; and let loose a lawless armed force upon the nation. Now if a supreme executive magistrate, upon whom all subordinate magistrates depend, if the administration of justice, if armed force on certain occasions be requisite for preserving our present constitutional form of government, it is self-evident, that a king who has by overt and unequivocal acts attempted to deprive

The actions of king James an absolute abandonment of his sovereignty.

deprive the community of these necessary means of support and preservation, must be allowed to have done whatever he could to dissolve the government, and involve the nation in anarchy and confusion. In this light the warmest devotee to the house of Stuart cannot surely deny, that king James the Second by these acts ceased, while their effects could last, to be *that* supreme executive power, which our constitution requires the king to be. The actual duration of these effects could not by possibility be known to the nation; and therefore as a community, upon the common principle of self-preservation, they had the indefeasible right of adopting such measures, as they thought most conducive to attain that end. For if a government be actually dissolved for one hour, by the act of the governor, the primeval rights of the governed to choose, square, and model their own government, revive in the same extent, as they enjoyed them before the formation of the government so dissolved. And upon these principles we must at this day candidly allow, that our ancestors, in 1688, did actually possess the right to make a new limitation of the crown, and to annex a new condition to the tenure of it.

Right of the nation to new model the government wholly at the revolution.

IF

If we take an impartial view of the whole transaction, we shall necessarily conclude, that our ancestors were satisfied with the general form and tenor of our constitution and government, by their continuing and confirming the greatest part, when an opportunity offered itself of new modelling the whole; and considering that their then actual state of anarchy, and the preceding ferment and disturbances in the nation were by the majority of them attributed to their sovereigns professing a different religion from their own, it is not surprising, that for the preservation and security of their own, as well as the peace and tranquillity of their posterity, they should have taken the most effectual means of preventing the occasion of any such disasters in future. It was in fact a duty incumbent upon them to do it, under the prepossessions of the majority of the community at that time.

What king James should have done, not to have abdicated.

If king James the Second, circumstanced as he was in the year 1688, had put himself at the head of his army and militia; had he convened a free parliament; had he paid attention to the advice of his bishops, and the remonstrances of several of his people; and had he summoned all his liege subjects to their allegiance; whatever rebellion might have

have ensued from some of his subjects ; and whatever might have been the fate of the arms of the prince of Orange, king James might have died in the field king of England, or been expelled by his rebellious subjects ; but he never could have been said to have abdicated, or forfeited, or abandoned his own or his people's rights.



## C H A P. IX.

## OF THE SUPREME EXECUTIVE POWER.

The executive  
power.

**I** Am now come to speak of the first branch of the legislative power of this realm, which the constitution has made the supreme executive power of the state, and which it has vested in a single person, that is to say, in that person, male or female, to whom the crown by the rule of hereditary succession shall descend. \* It rarely happens, that we have the satisfaction of finding a legislative exposition of any part of our constitution; whenever that happens, I feel myself emphatically bounden to submit it to my readers; for by the principles already laid down and established, the act of the majority of the community concludes every individual of the community; the act of the representatives of the nation is the act of the nation itself; the

\* I have already fully shewn the very essential alteration made in the rule of succession at the revolution; the old line was discontinued, and the condition of *being protestant* was annexed to the capacity of succeeding. Subject to this deviation and condition, the present rule of descent remains the same, as it was originally settled by the constitution.

three estates or branches of the legislature, which complete the parliament, make the full representation of the nation; and, therefore it can be nothing short of high-treason against the state, to disavow, contradict, or resist this legislative authority, expressed in an act of parliament. A new fact in the events of kingdoms often draws forth an explicit declaration from the legislature of certain fundamental principles, rules, and rights, which before had subsisted upon no other authority, than the universal unqualified admission and submission of the community. So upon the accession of queen Mary to the crown of England, in the year 1553, it was thought proper to make a full, clear, and explicit declaration of the rule and nature of the hereditary descent of the crown of England, as established by the constitution of the realm.

\* “ Forasmuch as the imperial crown of this realm, with all dignities, honours, prerogatives, authorities, jurisdictions, and pre-eminences thereunto annexed, united, and belonging, by the divine providence of Almighty God, is most lawfully, justly, and rightly descended and come unto the queen’s

The crown of England descendible to females.

\* Mary Seff. 3. c. 1.

P 2

highness

highness that now is, being the very true and undoubted heir and inheritrix thereof, and invested in her most royal person, according unto the laws of this realm; and by force and virtue of the same, all regal power, dignity, honour, authority, prerogative, preheminance, and jurisdictions doth appertain, and of right ought to appertain and belong unto her highness, as unto the sovereign, supreme governor and queen of this realm, and of the dominions thereof, in as full, large, and ample manner as it hath done heretofore to any other her most noble progenitors, kings of this realm; nevertheless, the most ancient statutes of this realm, being made by kings then reigning, do not only attribute and refer all prerogative, preheminance, power and jurisdiction royal unto the name of king, but also give, assign, and appoint the correction and punishment of all offenders against the regality and dignity of the crown, and the laws of this realm, unto the king; by occasion whereof the malicious and ignorant persons may be hereafter induced and persuaded unto this error and folly, to think that her highness could ne should have, enjoy, and use such like authority, power, preheminance, prerogative, and jurisdiction, nor do ne execute and use all things concerning

cerning the said statutes, and take the benefit and privilege of the same, nor correct and punish offenders against her most royal person, and the regality and dignity of the crown of this realm, and the dominions thereof, as the kings of this realm, her most noble progenitors, have heretofore done, enjoyed, used, and exercised.

“ For the avoiding and clear extinguishment of which said error or doubt, and for a plain declaration of the laws of this realm in that behalf ;

“ Be it declared and enacted by the authority of this present parliament, that the law of this realm is, and ever hath been, and ought to be understood, that the kingly or regal office of this realm, and all dignities, prerogative royal, power, preheminences, privileges, authorities, and jurisdictions thereunto annexed, united, or belonging, being vested either in male or female, are and be, and ought to be as fully, wholly, absolutely, and entirely deemed, judged, accepted, invested, and taken in the one as in the other.”

I blush to overcharge such plain matter with arguments and proofs ; but I trust, that the liberality of those, who themselves stand not in need of them, will countenance and encourage

encourage every attempt to enlighten others who may. Dr. Price has said truly, \* *Our first concern, as lovers of our country, must be to enlighten it; and is it not because they are kept in darkness, and want knowledge, that mankind submit to be treated as if they were a herd of cattle? Enlighten them, and you will elevate them.* This is wholesome doctrine, and if rightly applied, will produce much good. But I wish daily experience did not fatally convince us, how grossly it is misapplied and abused. I presume not absolutely to determine, that the effects of the scholars imbibing these precepts, are strictly attributable to the intention of the teacher in inculcating them. No error or abuse was ever attempted to be supported, but under the cover of some uncontrovertible general position. Thus protected, the malcontents of the day are taught voraciously to catch at every novelty, that can throw disrepute and disaffection upon our present establishment in church and state, with the intent to weaken, if they cannot dissolve, the bond of their union and submission to it. Every novelist, every theorist, is now a politician, informing, instructing, illuminating mankind; and

The malcontents under general propositions catch at every novelty.

\* Price, ubi supra.

seldom does the barb or poison within these glittering baits of knowledge and liberality shew its deadly effects, till the wound is irremediable. With all the boasted preferences, which our present existence gives us over our predecessors, I find, that about two centuries ago this sort of political angling was also the favourite amusement of the malcontents of those days; and whether the shoals of gudgeons were then more or less numerous than at present, certain it is, that there then were, in some of our predecessors, sufficient knowledge, penetration, and firmness, to detect and reject the flattering delusion. \* “ Amongst many errors concerning religion, which are currant in this unfortunate age, none is more dangerous or pernicious, than the opinion of such, as are commonly called politikes; so named, not because they practize true and perfect policie, but because they esteeme themselves, or are of many falsely reputed for prudent and politike men; and, therefore, as the Latin word *tyrannus*, which at first did signify a monarche and absolute kinge, came afterwards, by the abuse of roial authority to signify only a *tyrant*, and as in like manner the word *latrones* signified

False policy  
formerly  
known and re-  
jected.

\* Fitzherbert's Preface to his treatise concerning Policy and Religion, printed in 1606.

at the first, such as were the guards of princes, and grew in time by their disloyalty to be understood of *robbers* and *theeves*; so also, though the name of a *politike* doth signify in deede such a one, as practizes that parte of humane prudence, which concerneth state, and is properly called *policy*, yet by the abuse of such, as professe the same, it beginneth in all languages to be taken in euil parte, and is commonly applyed only to those, who framinge a policy after their own fancy, no lesse repugnant to reason, than to conscience and religion, change all the course of true wisdom and prudence, and peruert the order of nature it selfe, preferring things lesse worthy before the more worthy, inferiour thinges before superiour, corporal before spiritual, temporal before eternal, humane before diuine, the body before the soule, earth before heauen, and the world before God."

The same proposition often productive of the most opposite effects in the same person.

True propositions may be so applied to persons, times, and circumstances, as to produce the most opposite effects: the same idea will impel the same individual, according to the disposition or affection of the moment, to the most contrary emotions. I will instance a passage in Dr. Price's sermon, which would probably excite very different sentiments in the breast of the same person,

in

in the full glow of gratitude for royal favour, in the chapel of St. James, and soured with the loss of place or pension in the discontented congregation of the Old Jewry : \* “ Civil governors are, properly, the servants of the public ; and a king is no more, than the first servant of the public, created by it, maintained by it, and responsible to it ; and all the homage paid him is due to him on no other account, than his relation to the public ; his sacredness is the sacredness of the community ; his authority is the authority of the community ; and the term of *majesty*, which it is usual to apply to him, is by no means *his own majesty*, but the *majesty of the people* ; for this reason, whatever he may be in his private capacity, and though, in respect of personal qualities not equal to, or even far below many among ourselves, for this reason, I say, (that is, as representing the community and its magistrate) he is entitled to our reverence and obedience. *The words most excellent majesty* † are rightly applied to

\* Dr. Price’s Disc. on the Love of our Country, p. 23, 24.

† The word *majesty* is not, at least was not, always essential to express that constitutional deference and respect, which are due to the sovereign ; for, according to history, king Henry VIII. was the first of our sovereigns, to whom the term *majesty* was attributed.

him ;



him ; and there is a respect, which it would be criminal to withhold from him."

Treason to deny  
the king's pre-  
rogative.

Since it would be treasonable for any British subject openly to maintain, that the constitution of this kingdom does not vest the supreme executive power in the single person, who by the fixed rule of hereditary descent, shall have succeeded to the throne ; it is equally true and certain, that the constitution has affixed a certain limitation of prerogative or power to this person so in possession of the throne, which it would also be treasonable in any subject or member of the community to question or deny. I do not think it very material to canvass the motives, which draw from subjects that respect and reverence to the king's majesty, which Dr. Price says it would be criminal to withhold. Those, who derive the king's sovereignty immediately from Almighty God, can scarcely be conceived limited in their reverence and homage to his vicerent upon earth ; those, who trace it from the immediate appointment of the community, undervalue and condemn the people, in proportion as they subtract from the majesty of their appointee ; for the refusal of the absolute honours to the prince, is the disavowal of the relative honour to the people. I shall, therefore, here-  
after

The absolute  
honour of the  
king is the  
relative honour  
of the people.

after consider the submission and respect due from the subject to the sovereign, as a civil duty and obligation, which every member of the community is indispensably obliged to perform, under the penalties, which the state has annexed to the crime of high treason.

The most vehement opponents of kingly power admit, after Milton, \* that "*there is no power but of God*; that is, no form, no lawful constitution of any government." For Almighty God† "is equally the original of it, whether he first lodged it more in common, and left the communication of it to particular persons, to be the result of reason and deliberation, or himself immediately gave it to those particular persons." And thus clearly are to be understood those words of our blessed Redeemer to Pilate, † "*Thou wouldst not have any power over me, unless it were given thee from above*;" unless it be contended that Pontius Pilate, or Tiberius Cæsar, whose lieutenant he was, had like Joshua, Saul, or David received an immediate appointment or commission from God, to rule over the people of Israel. I have cited this

All power from God, whether mediately or immediately.

\* Milton's Defence, p. 64.

† Hoadley's Defence of Mr. Hooker's Judgment, p. 199.

‡ Joan. c. xix. v. 11.

The scriptures rendered pliant to the sense of every interpreter.

So are many political writers.

one quotation from scripture, that both parties may draw from it the satisfactory inference, that the submissive deference of any subject to an acknowledged sovereign will ever be regarded as a moral duty to Almighty God. Little will it avail me to attempt to prove or confirm my reasoning by the application of passages from the holy writ, where most men interpret it by their own private judgment; and in this very controversy, I firmly believe, that there is not a passage relating to kingly or magisterial power, from the beginning of Genesis to the end of the Revelations, which has not been tortured by the supporters of the opposite parties into contrary meanings.

The liberty, with which the ecclesiastical and theological writers upon this controversy have accommodated the authority of the scriptures to their respective doctrines, has been closely followed by most historical, political, and legal writers; for we find, through their writings, the very same texts quoted from the old approved authors, Bracton, Briton, Fleta, Fortescue, and others, to prove and support their opposite doctrines. It is neither incumbent upon me, nor is it competent for me to discuss the propriety of accommodating the sense of the holy scriptures

tures to opposite purposes ; but I feel it an indispensable duty to endeavour to affix a determined meaning to those civil authorities, which affect the question under our consideration.

The king (or queen) \* of this realm, in whom the constitution places the supreme executive power, is to be considered either in the natural capacity of a human individual, or in his political capacity as an integral component part of the legislature. Some things are said of the king, which are true only as applicable to his natural capacity, and false, if pretended to be applied to his political capacity ; and so *vice versa*. It will be my endeavour to keep my readers attention to the difference. His natural capacity he receives immediately from Almighty God ; his political capacity immediately from the people or community ; but not without the permission of Almighty God, from whom the people receive immediately their power and right to confer it : thus are reconciled the words of St. Peter, calling kings *a human ordinance, or human appointment*, with the words of St. Paul, styling magistrates *the ordinance of God*.

The king to be considered as either in his natural or in his political capacity.

\* Whenever I shall in future speak generally of the king, I beg also to be understood of a queen regnant, such as were Mary, Elizabeth, and Anne.

The

The king is a corporation in his political capacity.

The king, in his political capacity, is a corporation sole : now \* “ corporations sole consist of one person only and his successors in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. But as all personal rights die with the person, and as the necessary forms of investing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable, it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality.” So in this sense is it said, that the king never dies : and those, who are his heirs in his natural capacity, are called his successors in his political capacity ; for a corporation can have no heirs, as *nemo est hæres viventis*, and a corporation never dies.

\* Blak. Com. b. i. c. xviii.

## C H A P. X.

OF THE SUPREME HEAD OF THE CHURCH  
OF ENGLAND.

I Shall follow the common order of associating our ideas of church and state, by first considering the king as supreme head of the church of England. Now, although in this discussion I shall rather consider, what the constitution now is, than what it heretofore was; yet, as whatever ecclesiastical supremacy over the church of England is now vested by the constitution in the person of the king, is generally supposed to be vested in him by the continuance, recognition, revival, or transfer of an old power, and not by the creation, donation, and investiture of a new one, as I shall endeavour to make appear, it will be incumbent upon me to make some researches into the origin and establishment of *spiritual or ecclesiastical power* in this country. I will presume it useless to repeat any thing I have heretofore said, to prove that the majority of the community, who must conclude the whole, have not only an indefeasible right, but an indispensable obligation and duty to adopt that divine cult or worship, which

What ecclesiastical supremacy vested in the king.

Right and duty of individuals to follow the dictates of God,

which they shall conscientiously think God requires from them, and to countenance and support it with what civil sanctions they shall think proper. My examination therefore will not be, whether our ancestors exercised their right, and fulfilled their duty more or less judiciously or perfectly than their successors; but in what manner and to what extent they actually made a religious establishment an essential part of their civil constitution. This discussion has often been a subject of such rancorous controversy, that I am not totally free from fear, lest the liberality even of the present day, may be at first unequal to form a perfectly unbiassed judgment upon the subject. I am now to examine the truth, not the reason of facts.

As true as it is, that in the twenty-fourth year of the reign of king Henry VIII. the majority of the people of England did, by the act of their representatives in parliament, renounce and throw off the *spiritual* supremacy of the pope of Rome; so true is it, that they had uninterruptedly acknowledged and submitted unto it for near one thousand years before the twenty-fourth of Henry VIII. A. D. 1532. It is frivolous in the extreme, to treat this spiritual supremacy of

Acknowledgment of the pope's spiritual supremacy no usurpation.

of the pope as a papal usurpation; for who can be so simple as to believe, that such submission could have been forced upon the English nation, who were ever jealous of their liberty, against their consent, by one hundred and seventy-one popes, who during that space of time filled the papal see.

We must allow to our ancestors the same right and the same obligation of following the dictates of their consciences, which we claim and acknowledge ourselves. By the tenets of the religion, which they then professed, the spiritual primacy of the visible successor of St. Peter was an essential article of their belief; their submission therefore to the bishop of Rome, as such visible acknowledged head of the church was as free, as their adoption of the religion, which taught the necessity of such a primacy. What an absurdity would it not be, to speak of the belief and profession of the Roman catholic religion in Poland or Portugal as an usurpation? And if our ancestors thought proper to make a free voluntary tender and security to the bishops of Rome, either of Peter Pence, first fruits, or any other civil advantage, or benefit, how can that be called an usurpation, which could neither have been originally imposed, nor continue to be en-

Consent of the nation inconsistent with usurpation.

Q

forced



forced by any civil or human means, without the consent of the nation? The fact demonstrates the truth! For from the moment, in which the nation withdrew their consent, from that moment the bishop of Rome enjoyed no more civil or temporal rights, benefits, nor advantages within this kingdom, than St. Peter did from our heathen British ancestors, who inhabited the island in his days.

King Henry's benefit and submission to the pope's supremacy: the strong proof of its actual existence.

As to this point, I know of no authority, that can be so conclusive, as that of king Henry himself, who, about ten years before the passing of this act, in defence of the spiritual supremacy of the pope against Martin Luther, wrote a book, which he subscribed with his own hand, and sent to pope Leo X. by Dr. Clerke, the bishop of Bath and Wells, and for which he obtained the title of *defender of the faith*, which has been ever since kept up by our sovereigns to this day.

\* "I will not offer so much injury unto the pope, as earnestly and carefully to dispute heere of his right, as though the matter might be held in doubt; it is sufficient for that, which now we haue in hand, that this enemy (Luther) shewed himself so much

\* Henry VIII. in Def. Sacram. cont. M. Luth.

to be carried away with passion and fury, as he taketh all faith and credit from his owne sayings, cleerly declaring his malice to be such, as it suffereth him neither to agree with himself, nor to consider what he saith."

And then, after confuting *Luther's* opinion and assertion, *that the pope neither by diuine or humane law, but onlie by usurpation and tyrannie, had gotten the headshipp of the church*, he continues, "*Luther* cannot deny, but that all the faithfull christian churches at this daie doe acknowledge and reuerence the holy sea of *Rome*, as their mother and primate, &c. And if this acknowledgment is grounded neither in diuine nor humane right, how hath it taken so great and generall roote? How is it admitted so universally by all christendome? When began it? How grew it to bee so great? And whereas humane consent is sufficient to giue humane right at least, how can *Luther* saie, that heere is *neither diuine nor humane right*, where this is, and hath been for time out of minde, uniuerfall humane consent? Truly if a man will looke ouer the monuments of things and times past, he shall find that presently after the world was pacified (from persecution) the most parte of christian churches did obey the Roman; yea, and the Greeke church also,

though the empire were passed to that parte, wee shall find, that shee acknowledged the primacy of the same Romaine church, but only when shee was in schisme. And as for *S. Hierome*, though he were no Roman, yet did hee in his daies ascribe so much authoritie and preheminance to the Roman church, as he affirmed, that in matters of great doubt it was sufficient for his faith to bee allowed and approued by the pope of Rome, &c." And he says further.

"Whereas *Luther* so impudently doth affirme, that the pope hath his primacie by no right, neither diuine nor humane, but onlie by force and tyrannie, I do wonder how the mad fellow could hope to find his readers so simple or blockish, as to beleue, that the bishop of *Rome*, being a priest, unarmed, alone, without temporall force or right, either diuine or humane (as he supposed) should bee able to get authoritie ouer so manie other bishops his equals, throughout so manie and different nations, so far off from him, and so little fearing his temporall power; or that so manie people, citties, kingdomes, commonwealths, prouinces, and nations could bee so prodigall of their owne libertie, as to subject themselues to a forraine priest (as now so manie ages they haue done) or to give him  
such

such authoritie ouer themselues, if he had no right thereunto at all."

I cite these quotations, not for the sake of the reasoning or argument contained in them, but merely to prove, that the authority of the see of Rome, in all spiritual matters, was in fact *freely* submitted to by the community of this realm, before the reformation. For nobody will suspect King Henry VIII. of submitting tamely, and with full reflection, to any usurped or assumed authority whatsoever.

We are now to examine what this primacy was, which was supposed to be transferred from the pope to the king, in order to determine what the supremacy of the king over the church of England is at this hour. Sir Edward Coke, partly from official pomp and rigour, and partly from natural pedantry and pride, has undertaken to rest the title of his sovereign to his prerogative of spiritual supremacy upon such grounds, as never can stand the test of a cool dispassionate enquiry.

\* "The kingdom of England being an absolute empire and monarchy, consisting of one head, which is the king, and of a body politicke divided into two general parts, the clergy and the laity; both of them, next un-

What the supremacy is.

\* Rep. iv. fol. 9.

der God, must be subject and obedient to the same head in all causes; for that otherwise he should be no perfect monarch, or head of the whole body \*." If Sir Edward Coke had either understood, or wished well to our constitution, he would never have complained, that the kings of England were not sufficiently *absolute monarchs* for all the purposes of our constitution, without the superaddition of spiritual jurisdiction. How much more truly and more philosophically is this accumulation of prerogative represented by the learned bishop of Worcester, as the efficient cause of that excess of prerogative in the Tudors, which had nearly swelled into arbitrary and absolute despotism. † "I brought these general considerations only to shew the reverend opinion, which of course would be entertained of this mixt person, *the supreme head of the church*, compounded of a king and a pope; and how natural a foundation it was

This addition of prerogative in the king, the cause of its excess under the Tudors.

\* I have never met with any writer, who has pretended to deny, that every English clergyman is a subject of our king, and subject to all the laws of the realm. If the clergy have in any age claimed indulgences, exemptions, or dispensations, they claimed them no otherwise, than from the legislative power, which alone could grant them,

† Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 284, and seq.

for

for the superstructure of despotic power in all its branches. But I now hasten to the particulars, which demonstrate, that this use was actually made of that title.

“ And, first, let me observe, that it gave birth to that great and formidable court of the *high commission*, which brought so mighty an accession of power to the crown, that, as experience afterwards shewed, no security could be had for the people’s liberties, till it was totally abolished. The necessity of the times was a good plea for the first institution of so dangerous a tribunal. The restless endeavours of papists and puritans against the ecclesiastical establishment gave a colour for the continuance of it. But as all matters, that regard religion or conscience were subjected to its sole cognizance and inspection, it was presently seen how wide an entrance it gave to the most tyrannical usurpations.

Court of high  
commission.

“ It was further natural, that the king’s power in civil causes should keep pace with his authority in spiritual; and fortunately for the advancement of his prerogative, there was already erected within the kingdom another court of the like dangerous nature, of ancient date, and venerable estimation, under the name of the court of *star chamber*, which brought every thing under the direction of the

Court of star  
chamber.

the crown, that could not so properly be determined in the high commission. These were the two arms of absolute dominion, which at different times, and under different pretences, were stretched forth to the oppression of every man, that presumed to oppose himself to the royal will or pleasure. The star chamber had been kept, in former times, within some tolerable bounds; but the high and arbitrary proceedings of the other court, which were found convenient for the further purpose of reformation, and were therefore constantly exercised, and as constantly connived at by the parliament, gave an easy pretence for advancing the star chamber's jurisdiction so far, that in the end its tyranny was equally intolerable, as that of the high commission.

High notions  
of prerogative  
in our kings.

“ Thus the king's authority, in all cases spiritual and temporal, was fully established, and in the highest sense, of which the words are capable. Our kings themselves so understood it; and when, afterwards, their parliaments shewed a disposition to interfere in any thing relating either to church or state, they were presently reprimanded, and sternly required not to meddle with what concerned their prerogative royal, and their high points of government.”

This reverend and learned prelate is certainly

tainly warranted in attributing these effects to this translation of spiritual power from the pope to the king; but no individual is warranted to revile or traduce the community, much less to rise up against it, because at any particular time, they thought proper to increase the proportion of prerogative or power, which the constitution had formerly annexed to the executive branch of the legislature. Blessed is the nation at this day in a monarch, to whom this extension of prerogative is but an increase of his people's happiness. The constitution formerly did, and still does, admit of this general division of the people into *clergy* and *laity*; and the ecclesiastical or spiritual rights and liberties of the former seem anciently to have been more generally understood and admitted, than the civil or temporal rights and liberties of the latter. Thus, in the first legislative act of the community, that has been handed down to us in writing, which is called *Magna Charta*, the great charter of our liberties, and which was passed in the 19th year of Hen. III. about the year of our Lord 1225, we find the first care and security is had of the church, viz. *that the church of England shall be free, and shall have all her own rights and liberties inviolable*. Had these been either dubious or uncertain,

Rights of the community to increase the prerogative.

The liberties of the church granted by the nation.



uncertain, they would undoubtedly have been specified and ascertained in the charter. And if these rights and liberties were not holden and enjoyed by the grant, consent, or recognition of the nation, the legislature would not have presumed to sanction or confirm them to the church. That these *rights and liberties* constituted the *civil establishment* of the church, and therefore proceeded wholly from the nation, or the legislative power of the state, is evident from the term *church of England*; for it is notorious, that this term did not import then, as it now does, a separate religious society, differing in doctrine, government, and discipline, from the church of Rome; for in all real spiritual matters it then was one with the church of Rome, in communion with her, and subordinate to her, as to its supreme head. These rights and liberties therefore made no part of her doctrines, but consisted merely in the civil sanctions, with which the English nation thought proper to countenance and support that religion, by making the clergy of it a separate and distinct body from the laity.

In the days of Bracton, the spiritual supremacy of the pope acknowledged by the nation.

Bracton, who lived in this very reign, but had written his book in the preceding reign of King Henry II. and must consequently have been conversant with the spirit and practice

practice of the constitution and laws of his own times, confirms this general division of the people into clergy and laity, and immediately attributes the spiritual supremacy, to which the nation was then subject, not to the king, but to the pope. \* “ Amongst men there is a difference of persons; because of men some are distinguished and preferred, and have a superiority over others. Our Lord, the pope for instance in spiritual matters, which relate to the priesthood, and under him archbishops, bishops, and other inferior clergy.” This authority will alone suffice to expose the futile attempt of Sir Edward Coke to deduce Queen Elizabeth’s title to the spiritual supremacy from the old constitution and common laws of the realm; for in a matter of this nature and of this date, nobody will, I believe, set up the authority of Sir Edward Coke against that of Bracton. Sir Edward Coke pretends not to vest in the queen any other spiritual supremacy, than what the ancient kings of England possessed: now Bracton expressly says, that in his own

\* Apud homines verò est distinctio personarum; quia hominum quidam sunt præcellentes & prælati, & aliis principantur. Dominus papa videlicet in rebus spiritualibus, quæ pertinent ad sacerdotium, & sub eo archiepiscopi, episcopi, & alii prælati inferiores. Bracton de Leg. & Consuetud. Ang. l. i. fol. 5.

and

and preceding times, the pope had *that* superiority, which Sir Edward Coke labours to prove was vested in Queen Elizabeth by the ancient constitution of the realm.

No foreign law can have force but by the adoption of the nation.

As no law can be enacted in a state, without the free assent of the people, which necessarily attends the exercises of the legislative power, much less can any foreign law enacted by another state or community, acquire any binding or coercive effect without the voluntary adoption of the community, which admits or receives it. As therefore upon this ground, certain canon laws, decretals, and ecclesiastical ordinances from the court of Rome had, for about one thousand years, been received and submitted to in this country, the moment this consent of the nation was withdrawn, they immediately lost whatever energy, force, or binding effect, they had during that time acquired.

The whole canon law never was adopted by this nation.

It is very evident, that our ancestors never did give a general unlimited submission to the whole canon law, as appears from the firm and heroic answer of the barons at Merton, in the reign of Hen. III. A. D. 1235. The question was moved in parliament,  
\* " Whether one being born before matri-

mony may inherit in like manner, as he that is born after matrimony? All the bishops replied, that they would not, nor could not answer to it, because this would be against the common form or usage of the church; and all the prelates entreated the lords (magnates) that they would consent that all such, as were born before matrimony should be legitimate, as well as they that were born after matrimony, as to the succession of inheritance, forasmuch as the church made such for legitimate. And all the earls and barons with one voice answered, that they would not change the laws of the realm, which had hitherto been used and approved of." Here we see the bishops entreating the laity to adopt a part of the canon law, which they would certainly not have done, if, without their assent, it could have had any force in this nation; for the clergy have in no age used the deprecatory stile of supplication to enforce a duty of obligation.

One part of the canon law cannot, *proprio vigore*, have a more binding quality than another; they therefore, who may reject a part of it, may reject the whole. I have dwelt on this transaction to prove, that whatever force or authority the canon law had acquired in this country, it was solely owing

to

Every part of the canon law, *proprio vigore*, equally binding.

to the free assent and adoption of it by the representatives of the nation. Had not this been so universally understood at this early period, we never should have seen recorded a petition of the (clergy rejected by the laity on a point, which to the glory of the nation is a law at this hour. The bishop of Worcester attributes this answer of the barons (whom, in one breath, he very unaccountably calls both *virtuous* and *licentious*) \* to their liberty and patriotism. † “ They had nothing to object to the proposal itself; but they were afraid for the constitution.” I cannot help allowing some credit to my ancestors for their judgment and experience, as well as for their love of liberty and the constitution. And if I am to pass any judgment upon the conduct of the legislative body of that day, I cannot do it impartially without commending, on one hand, the constitutional prudence of the clergy in *asking* the laity to adopt the canon law, and acquiescing, without reply, in their refusal; and applauding, on the other hand, the heroic firmness of the

\* Dr. Hurd's Dial. vol. ii. p. 190. “ Yet the answer of the *virtuous* barons is as follows.”—“ These barons, as *licentious* as they were, preferred their liberty to their pleasure.”

† Ibid. p. 191.

laity, in resisting the powerful influence of the whole hierarchy, by preserving the laws, which they thought beneficial to the community.

In order to form our minds clearly and satisfactorily upon the subject of this spiritual supremacy or headship of the church of England, we must first fix and establish our ideas of the nature and quality of *spiritual* power or jurisdiction; by which I mean that *spiritual* power or jurisdiction, which our blessed Redeemer came upon earth to establish, for the guidance, maintenance, and preservation of his church; which he delivered over to his apostles, to be continued, through their successors, to the end of time. This is essentially paramount to, and independent of all temporal power or authority whatsoever; the grounds of its support, and the means of its propagation and continuance are merely spiritual; and its real properties, nature, and effects, will be most clearly perceived in the exercise of it in those countries, where the Christian religion had never acquired any degree of civil establishment. The end of this *spiritual* power is to direct us to salvation by instruction, discipline, and correction; and it has for its object only such spiritual things, as belong to the soul, as matters

Of real spiritual power or jurisdiction.

Its nature.

Its end.

of

its means.

Spiritual ex-  
communication  
of Simon Ma-  
gus.

of faith, morality, sacraments, and such like ; and it is carried into action or exercise by preaching, teaching, administration of the sacraments, censures, suspensions, excommunication, &c. \* “ The apostles, and all Christian ministers, for many centuries, lived on the voluntary contributions of their respective churches, and they had no means of enforcing their censures besides exclusion from their societies.” It is by the 30th canon of the apostles affirmed, that St. Peter excommunicated Simon the magician, when he offered to purchase the gift of the Holy Ghost with money : † “ But Peter said to him, thy money perish with thee, because thou hast thought that the gift of God may be purchased with money ; *thou hast neither part nor lot (participation) in this matter (word)*, for thy heart is not right in the sight of God. Repent, therefore, of this thy wickedness, and pray God, if perhaps this thought of thy heart may be forgiven thee ; for I perceive that thou art in the gall of bitter-

\* Dr. Priestley's Letters to Mr. Burke, Let. VII. p. 67.

Acts, ch. viii. ver 20. Hence the crime of *simony*, which, as well as *excommunication*, is productive of very different effects in a country, where there is a civil establishment of the Christian religion, and where there is none.

nels,

ness, and the bond of iniquity." So St. Paul excommunicated the incestuous Corinthian, \* and the two heretical men, Hymeneus and Alexander †.

No civil effect was produced in any of these excommunicated parties; but they remained to all intents and purposes *recti in curiis* of their respective communities as much after, as they were before their excommunication. And indeed Almighty God seems to have set us these special examples of the spiritual power in his church to chastise by spiritual weapons in three instances, for crimes not cognizable by the temporal or civil courts of those countries, in which they were committed, that we might the more distinctly see and determine the line of difference between the two jurisdictions; ‡ "*For the weapons of our warfare are not carnal, but mighty through God.*" If the excommunica-

Spiritual excommunication produces no civil effect.

\* 1 Cor. v. ver. 1. "For such fornication, as is not so much as named amongst the Gentiles, that one should have his father's wife."—ver. 13. "But them that are without God judgeth: therefore put away from amongst yourselves that wicked person."

† 1 Tim. i. ver. 19, 20. "Holding faith and a good conscience, which some having put away, concerning faith, have made shipwreck. Of whom is Hymeneus and Alexander, whom I have delivered unto Satan, that they may learn not to blaspheme."

‡ 2 Cor. ch. x. ver. 4-

R

tion



tion had been imposed for a civil crime, this difference might have been less discernible to uninformed minds.

Simony no civil  
crime;

nor heresy.

Incest not cog-  
nizable by the  
civil law of Co-  
rinth.

In what excom-  
munication con-  
sists, according  
to Dr. Priestley.

In the first instance, there could be no human law at that time against the crime of simony; nor, indeed, could heresy have been criminal in that state, which knew not the religion, from which it was a voluntary and obstinate deviation; and St. Paul intimates, that the Corinthians had not mentioned this sort of incest in their whole code of laws, consequently had not annexed any penalty or punishment to the commission of it, because they presumed upon the impossibility of its being committed. \* “The sanctions of the church of Christ in this world are like itself, and like the *weapons of the Christian warfare*, not carnal and temporal, but of a *spiritual* nature; and do not affect a man’s person, life, liberty, or estate. All that our Saviour directs in case of the greatest refractoriness, is to consider such obstinate offenders as *heathen men and publicans*; that is, we are justified in ceasing to look upon them as brethren and fellow Christians; and they are not entitled to our peculiar affection and attention as such.

\* Dr. Priestley’s *Essay on the First Principles of Government*, sect. viii. p. 153.

“The

“The *delivering over to Satan*, which St. Paul mentions as a punishment for the greatest offence, that could be committed in the Christian church, is not a delivering over to the *civil magistrate*, or to the executioner: In short, all that the New Testament authorizes a Christian church, or its officers, to do, is to exclude from their society those persons, whom they deem unworthy of it.”

• “In order,” says Fleury, “to judge soundly upon this subject, we must begin by acquiring a proper knowledge of the real essential jurisdiction of the church, and distinguishing it carefully from the accessaries, which it has at different times received, either by concessions from sovereigns or states, or by usages and customs insensibly introduced. We must also in candour allow, that in these latter ages the ecclesiastical and secular powers have frequently encroached upon each other.”

Mutual encroachments of the civil and spiritual power.

These mutual and reciprocal usurpations have proceeded from the inattention of both parties to their respective rights; and I scarcely feel it an excess of boldness to assert, that there never would have existed a serious or lasting difference or dispute between church and state; if their different and respective

• Fleury's Disc. vii. sur l'Histoire Ecclesiastique, sub. init.

rights, powers, and jurisdictions had been clearly set forth and ascertained; and confident am I, that if such encroachments had been avoided, the mutual respect for each other would have greatly increased the energy of their respective establishments, and forwarded the ends of their respective institutions.

The spiritual and civil powers often tend to the same end.

When I say, that these powers are of a different nature from each other, I do not assert, that they necessarily act in opposition, or in a different direction from each other: but their sources of action are different. The church prohibits, and may punish the sin of murder; the state also prohibits and punishes murder as a crime; both prohibitions and punishments tend to the same end, though they differ essentially in their origin, means, and effects; and certainly nothing can be more laudable, than for human laws to be directed to the noble end of seconding the views and intentions of Almighty God upon his creatures, which in his goodness he has revealed to us. This is the true principle, upon which communities make civil establishments of religion.

\* “ Our blessed Redeemer, in his all-wise

\* The Case of the *Regale* and the *Pontificale* stated, printed in 1702, p. 19.

providence,

providence, foreseeing the consequence on both sides, as he set up his church independent of all the powers of the earth, so he gave her no authority, that could possibly interfere with the civil powers. He altered nothing of the civil powers, but left them as he found them. He gave to Cæsar all that was Cæsar's; but the things of God, and the administration of the spiritual kingdom of heaven upon earth, that he left in the hands of his church, and accountable to none but himself. That as it is rebellion and usurpation in the church to extend her commission to *civil* power, so it is the highest sacrilege and rebellion against Christ, for the civil power to extend their commission into the spiritual kingdom, and usurp upon the sacred office. It is confounding of heaven and earth; and each may and ought to assist the other, without encroaching upon one another's province. The state may protect and honour the church, without invading any part of her office; as the church ought to enforce obedience to the civil magistrate in all lawful things, without assuming any temporal power over him. This is the *concordat* and *agreement* betwixt the church and state, upon what we call their incorporation; and there is no other incorporation but this; it

The church independent of all civil powers upon earth.

Incorporation of church and state.

is

is not giving up their power to one another : that would be confusion, and an eternal seed of debate and jealousy of each other : the best way to keep up the agreement is, to preserve their powers distinct and independent of each other.’

Civil effects  
sometimes mis-  
taken for spi-  
ritual.

Since the incorporation of the civil establishment of religion with our constitution, many acts, orders and regulations, which relate to or affect ecclesiastical or spiritual matters, are frequently represented as *ecclesiastical* or *spiritual*, which notwithstanding in fact are purely temporal or civil. And although these powers, authorities, and jurisdictions may often appear compound, yet they are easily analyzed and resolved into their original component parts, and the different effects are obviously traced to their primæval principle, or efficient cause. The unerring criterion to determine, if an act proceed from the real true *spiritual* jurisdiction or power of the church, is to examine if any *civil* or *legal* effect be annexed unto it ; for a civil effect will indisputably prove, that it proceeded from the civil sanction or establishment of religion by the state ; as all the effects of this civil establishment must necessarily be in their nature *temporal* or *civil*. It will appear to any one, who considers coolly  
and

and impartially the words and tendency of the 24th of Henry VIII. for the *restraint of appeals*, that it was intended to produce no other effect, than an alteration in a part of the *civil* establishment of religion; but this I shall consider more fully hereafter.

24 Henry VIII.  
intended to alter  
the civil esta-  
blishment.

\* “ If we attend to the nature of the complaints, which the kingdom was perpetually making in the days of Popery of the *Roman* usurpations, we shall find, that they did not so much respect these usurpations themselves, as the person claiming and enjoying them. The grievance was, that appeals should be made to *Rome*; that provisions should come from thence; in a word, that all causes should be carried to a foreign tribunal, and that such powers should be exercised over the subjects of this realm by a foreign jurisdiction. The complaint was, that the Pope exercised these powers, and not that the powers themselves were exercised. So on the abolition of this supremacy, the act, that placed it in the person of the king would naturally be taken to transfer upon him all the privileges and pre-eminences, which had formerly belonged to it. And thus, though the act was so properly

Complaints of  
certain griev-  
ances in the civil  
establishment of  
religion,

† Hurd's Dial. vol. ii. p. 279, & seq.

drawn as to make a difference in the two cases, yet the people at large, and much more the king himself, would infer from the concessions, 'that the Pope had usurped his powers on the crown;' that therefore the crown had now a right to those powers. And the circumstance of this translation's passing by act of parliament, does not alter the matter much, with regard to the king's notion of it. For in that time of danger, and for the greater security of his new power, he would choose to have that ratified and confirmed by statute, which he firmly believed inherent in his person and dignity.

"Then, to see how far the current opinions of that time were favourable to the extension of the regal authority, on this alliance with the papal, we are to reflect, that however odious the administration of the pope's supremacy was become, most men had very high notions of the plenitude of his power, and the sacredness of his person. "*Christ's vicar* upon earth," was an awful title, and had sunk deep into the astonished minds of the people. And though *Henry's* pretensions went no further than to assume that vicarial authority within his own kingdom, yet this limitation would not hinder them from conceiving of him much in the same way as of the

pope

The king becoming the supreme head of the civil establishment raised very exalted notions of the sovereign.

pope himself. They, perhaps, had seen no difference, but for his want of the pope's *sacerdotal* capacity. Yet even this defect was in some measure made up to him by his regal. So that between the majesty of the kingly character, and the consecration of his person by this mysterious endowment of the spiritual, it is easy to see how well prepared the minds of men were to allow him the exercise of any authority, to which he pretended."

And to what degree this spiritual character of head of the church operated in the minds of the people, we may understand from the language of men in still later times, and even from the articles of our church, where the prerogative of the crown is said to be that, which *godly kings* have always exercised; intimating, that this plenitude of power was inherent in the king, on account of that *spiritual and religious* character, with which, as head of the church, he was necessarily invested.

It cannot be denied, but that the 24th of Henry VIII. operated as the translation of a part of the headship of the civil establishment of the church of England, from the Pope to the sovereign. The operative part of that act, in as much as it affected the constitutional church establishment and royal prerogative,

The supremacy of the civil establishment transferred from the Pope to the King.



The subject matter of this act clearly relates to the civil establishment.

gative, enacted, that all *causes testamentary, causes of matrimony and divorces, rights of tythes, oblations, and obventions*, should be in future *heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the king's jurisdiction and authority, and not elsewhere, notwithstanding any foreign inhibitions, appeals, sentences, summons, citations, suspensions, interdictions, excommunications, restraints, judgments, or any other process or impediments*, from the *See of Rome, &c.* Every sort of process there mentioned is, upon the very face of it, the direct creature of the *civil establishment* of the Roman Catholic religion in this nation; and if the nation chose to seek their redress by resorting to the legal courts of Rome upon certain subjects, I know of no authority above themselves, that could check or prevent them from doing it; they were certainly bound to it by no article of the Roman Catholic doctrine; and they were as free to desist, as they had been to commence the usage. I wonder much, that the nation did not sooner ease themselves of the expence, trouble, and delay of carrying their suits to so distant and foreign a judicature; and I wonder not less, that to this day they refer the decision of so many of their rights and liberties to what are now called the spiritual courts,

The present spiritual courts like those courts at Rome to which we formerly resorted.

courts, which continue to be ruled and determined by the same civil Roman and Canonical laws, to which they formerly resorted. But I am concluded by the act of the majority, and I submit with respectful deference to their jurisdiction.

In their nature, our spiritual or ecclesiastical courts at this day partake just as much of real *spiritual* jurisdiction, as the courts, to which our ancestors were wont to resort at Rome. If the judges or practitioners in either happened to be in orders, it was accidental, or at least immaterial to their official jurisdiction; for they derived no more jurisdiction nor sanction from their ordination, than our serjeants practising at common law did of old, who introduced the use of the coif, to conceal their clerical tonsures from the eyes of the public, as by canon they were prohibited to be either advocates or judges. Although the jurisdiction of their courts went to the decision of disputes and litigations, arising out of or connected with subjects of a spiritual or ecclesiastical nature, yet the courts themselves were purely civil or temporal, in as much as they were created, supported, and maintained merely by the civil or temporal power, and acquired their whole force and authority from the civil legislative body of that

Spiritual courts  
improperly so  
called.

that community, in which they were established, or which chose to submit to their authority and jurisdiction. It would be equally absurd to look for any divine mission, or authority, or special guidance of Almighty God, in the old judges of the consistory or other courts of Rome, to which our ancestors resorted, as it would be ridiculous to expect a peculiar gift of divine grace and inspiration in a modern surrogate or proctor of doctors commons, whither we now carry our suits of the like nature. The origin of these courts, and of the suits prosecuted in them, the objects of many such suits (as wills, &c.) the method of carrying them on, the effects of their determination and judgments, all bespeak them the direct creatures of a civil establishment.

Excommunication of these courts no real spiritual excommunication.

The *excommunication*, which is pronounced in these courts, is as different from that spiritual excommunication, which I have before spoken of, as the power of the grand signior over his janissaries is different from that of a Christian bishop over his diocese. No civil effect whatever can be produced by a mere *spiritual* excommunication, as I have before said; and there can be no excommunication pronounced by these courts, which does not produce some civil effect.

Sir

Sir Edward Coke most curiously labours to prove, that whatever spiritual jurisdiction, right, power, or authority, either by usurpation or right, was admitted or pretended to be exercised by the popes of Rome within this nation, was vested in equal plenitude in her majesty queen Elizabeth; alledges amongst many other, this very singular reason. \* “ *Reges sacro oleo uncti, sunt spiritualis jurisdictionis capaces*; kings, being anointed with the sacred oil, are capable of spiritual jurisdiction.” I am surprised, that the fertile and diffused genius of Sir E. Coke has not enlarged upon this spiritualizing unction of his queen. In another part of his works, however, he recurs to a more solid ground for the temporal or civil powers interfering with the effects of ecclesiastical excommunication; for taking notice that by the 25 Edward I. (c. iv.) the archbishops and bishops were directed to pronounce sentence of excommunication against all those, that by word, deed, or council, should do contrary to the thereby confirmed charters, or that in any point should break or undo them, says, very consistently and truly, † “ This excom-

Sir Edward Coke's idea of the spiritual capacity of queen Elizabeth.

Whatever excommunication produces a civil effect subject to the power of parliament.

\* 5 Rep. Caudrey's Case, xvi.

† 2 Instit. 527.

munication

munication the prelates could not pronounce without warrant by authority of parliament; because it concerned temporal causes." And I beg leave to add, upon the same principle, that no sentence of excommunication that does produce a civil or temporal effect can be passed, or receive any force in this country, but by the authority or permission of parliament. Upon this principle also, by one of the laws or constitutions of Clarendon, was the king's, or in his absence his judge's consent, made a previous requisite, before any bishop could excommunicate a tenant of the king holding in *capite*; because as the municipal civil law of this country annexed certain civil penal and disabling effects to such an excommunication, so as to exclude the excommunicated person from the civil community, it was essentially necessary, that the community should be consenting to the loss of its own member; and then *volenti non fit injuria*; *he who consents is not injured*.

It may not be unacceptable to some of my readers, if I describe what a real *spiritual court* is, that by the comparison of it with those courts, that have improperly obtained the appellation of *spiritual courts* both in this nation and elsewhere, their difference may be more clearly ascertained. I write only for such persons as admit, that the spiritual ordi-

nation

Spiritual ordi-  
nation necessary  
for the minist-  
tery of the gos-  
pel.

nation of priests can alone qualify them for the ministry of the gospel, and entitle them to that spiritual power and jurisdiction, which are requisite for their sacerdotal functions, and which are not even claimed by the laity\*; and I have before said, that the real spiritual power and jurisdiction left by Christ upon earth, had for their object the advancement of the faithful towards salvation, which could only be pursued by the means of the spiritual weapons of instruction, example, and punishment. † “This is unexceptionably admitted by all, who believe that Christianity is a revealed religion.” \* “For that no king nor state can believe any religion, that depends upon their authority; because then they must know, that the original of it is not divine. At least, they can never believe Christianity, which only is a revealed religion, and therefore must come directly from heaven. And that, if they believe Christ did institute a church upon earth, and gave

Christianity a  
revealed reli-  
gion.

\* I believe few of our countrymen (except Quakers, Baptists, and Independents) hold at present with Luther, that all people are priests, and capable of all spiritual functions, both men and women. Vid. *Luther. de Abrog. Missæ, & de cap. Bab.*

† Case of the *Regale* and the *Pontifical*. p. 121.

her

her any commission, they must believe such commission to be divine ; which they cannot believe, if they think it in their power to limit it at their pleasure, and make it dependent upon them. They cannot think, that Christ gave any such *spiritual* commission, unless they believe it to be superior to them in spirituals."

What a real spiritual court is.

A real *spiritual* court then must consist of such persons only, as are within this spiritual commission, in right and by virtue of which they sit, judge, or determine. Such a court can only have for objects of its decisions, the faith, morals, instructions, and punishment of those, who submit voluntarily to the authority and jurisdiction of the court, or rather, who profess the religion, upon the principles of which the court is established ; for St. Paul, speaking of the idolatrous Gentiles of his time, who did not submit to or profess the Christian religion, and writing thereupon to the lay Corinthians, who had embraced Christianity, says, \* " For what have I to do to judge them also that are without ? Do not you judge them that are within. But them that are without, God judgeth." And the only punishment, by which they can en-

\* 1 Cor. v. ver. 12, 13.

force their decisions, is the purely spiritual punishment of what I call *spiritual excommunication*, or delivery over to Satan, or deprivation of the communion of the faithful in the participation of the spiritual rites of the church. Such courts are what the Roman Catholics call their Œcumenical Councils; they consist of bishops, who sit as judges, assisted by priests as their theologians from all Catholic countries; they are bounden to act independently, and without the controul or influence of any civil power whatsoever. When they pronounce and decide upon any point of faith and morals, their decisions are positively binding and conclusive upon all those, that are within their jurisdiction, and they are usually enforced by the denunciation of *anathema* against those, who shall deny or resist them. But when they direct, recommend, or enjoin matter of ecclesiastical discipline, they know, that their judgments or decrees can only obtain force and take effect by the consent of the civil power of different states, and therefore they enforce them not by anathema; other means they have not. Thus it is notorious, that the discipline of the council of Trent was never admitted by France, and some other Roman Catholic states of Europe; and in those



Spiritual anathema produces no civil effect.

states, into which it was admitted, it acquired its force and efficacy from the adoption of it by the civil power, without whose consent it could not have been adopted at all.

The *anathema* of the most numerous, learned, complete council, that ever did or ever can be convened, produces not of itself the smallest degree of civil effect in the person, who is anathematized, or thus spiritually excommunicated. It abridges as little the rights of an Englishman, as it incapacitated of old Hymeneus or Alexander to enjoy the civil benefits of their respective laws and constitutions.

As I am endeavouring to ascertain what that ecclesiastical supremacy is, which our constitution now vests in the king, and it is evident, that the investiture was made by act of parliament, I shall premise some general observations upon the nature of such acts of parliament; for to my present purpose it is immaterial, whether the act of parliament, which vested the headship or supremacy over the civil establishment of religion wholly in king Henry the Eighth were declaratory of the old law, as Sir Edward Coke labours (I think in vain) to prove, or whether it were constitutive of a new law.

“ An

\* “ An act of parliament,” says Sir Christopher Hatton, “ is a law agreed upon by the king or queen of England, having legal authority, the lords spiritual and temporal, and the commons lawfully assembled, which taketh strength and life by the assent royal.”

An act of parliament therefore is an act of the highest human authority, which can be done in this or any other country ; for as I have frequently before said, it is the complete act of the representatives of the community or people, from whom all human power and sovereignty originate. We are to consider an act of parliament, which gives any rights, or confers any privileges, or vests any authority in one or more individuals, like any other human act or instrument, which operates in a similar, though inferior manner. We must therefore consider first the right, power, and capacity of the granting party, who is commonly called the *grantor* ; secondly the nature of the thing intended to be granted ; thirdly the capacity or ability of the party, to whom the grant is intended to be made, who is commonly called the *grantee* ; and fourthly the nature and operation of

Acts of parliament like other deeds of grant.

\* A treatise concerning statutes, by Sir C. H. A. late chancellor of England, p. 2.

the act, deed, or instrument, by which the grant is intended to be effected.

The grantors  
are the commu-  
nity of this na-  
tion.

May grant what  
they can hold.

The grantors in the present instance are, properly speaking, the whole community of this nation, and therefore are capable of granting whatever they are capable of holding ; (that is) they are capable of deputing or delegating all those rights and liberties to others, which they are capable of possessing and exercising themselves. The thing supposed or intended to be granted, was the spiritual headship or supremacy of the religion, which the nation at that time voluntarily and freely professed and followed : this was the Roman Catholic religion. The nature therefore of the thing intended to be granted can only be properly known by the nature of the submission and subjection, which the members of that communion pay and acknowledge to the spiritual head of their church. I say then, without apprehension of being contradicted, that the Roman Catholic church never did allow the spiritual supremacy of the Pope of Rome upon any other ground or title, than that of his spiritual ordination and election, by virtue of which they believe and maintain him to be the regular and lawful successor of St. Peter, and the representative or vicegerent of Christ upon earth.

What the Ro-  
man Catholics  
call the spiritual  
supremacy.

Now

Now it is evident and clear, that this title to that supremacy, which they thus acknowledged, could not be in the gift or disposal of the English nation; for the Roman catholics never acknowledged any spiritual supremacy, which they did not hold or believe to extend, as the word *catholic* imports, over the universal congregation of Christians, who believed in the tenets of their faith. Now no lay individual of this nation, nor the whole community collectively, ever pretended to the power of conferring holy orders; nor have I ever met with a claim set up by the whole or any part of this nation, during the thousand years, that the Roman catholic was the church establishment of this country, to send deputies or representatives to vote in conclave for the election of a Roman pontiff.

As clear then as it is, that no share, portion, or degree of this merely *spiritual* supremacy was at the disposal or in the gift of the English nation, so clear is it, that every particle of power, authority, and jurisdiction, which enters into it, or is derived from the civil establishment of religion, was in the gift or disposal of the community, as by *their* free assent alone it could ever have been adopted and settled. The headship therefore, or supremacy of the *civil* establishment

The real spiritual supremacy over the church not at the disposal of the nation.

The headship or supremacy of the civil establishment is at the disposal of the nation.

ment of religion must for ever in its nature be transferable or extinguishable by the community, which incorporate it with their civil constitution.

Neither infants nor women capable of ordination.

According to the doctrine of the church of England, every man is generally capable of receiving ordination or holy orders; but it must be from the hands of those, who are qualified to confer them; and according to the same doctrine, no woman nor infant is capable of receiving ordination or holy orders. Though Sir Edward Coke should conjure up his virgin queen, like a new goddess, from an ocean of his *spiritualizing christm*, she would still remain destitute of every particle of that *spiritual* power, authority or jurisdiction, which were given to the apostles to guide, rule, govern, and preserve the church of Christ. Yet though unanointed with this holy oil, nay even though not regenerated in the sacred font of Christian baptism, \* queen Elizabeth would have been fully capable of receiving all that power, authority or jurisdiction over the *civil* establishment of religion, which the community were capable of giving; and I have endeavoured

Even Christian baptism not necessary for the supreme head of the civil establishment.

\* It is singular, that the proof of Christian baptism is not required by the law of England to qualify a person for any benefit or advantage in the state.

before

before to prove, that they could confer what-ever could not be imposed upon them without their consent.

It is my indispensable, and indeed my only duty, to consider the operation of the laws now subsisting, that affect the king's supremacy over the church of England, which I am happier to set forth in the words of others, than my own. \* " Here one interposed and desired to know, how all this would agree with our present laws, and since the reformation, and instanced the statutes 25 H. VIII. c. 16. and 37 H. VIII. c. 17. &c. with the commission, that archbishop Cranmer took out for his *bishoprick* from Edw. VI. which is inserted in bishop Burnet's Hist. of the Reformation, part II. Collect. Record. to book i. n. 2. p. 90. and the like done by other *bishops*, whereby they held their *bishopricks* during pleasure of the king, and owned to derive all their power, even ecclesiastical, from the crown, *velut à supremo capite, & omnium infra regnum nostrum magistratuum fonte & scaturigine*, as from the fountain and original of it, &c. To this it was said ;

" That all this is to be understood only

\* Case of the *Regale* and *Pontificat.* p. 60. & seq.

The king's supremacy to be understood only of the civil power, &c.

of

of the *civil* power and *authority*, which by the *laws* of the *land* were annexed to the *sacred* office. As the *civil* jurisdiction, that is granted to the *bishops* courts, to the *bishops* themselves, as *lords* of *parliament*, &c. to the *civil* penalties, which follow their *excommunication*, and the *legal* protection to their *ordination*s, and other acts of their *office*. And these are derived *only* and *solely* from the king. Nothing of this was granted to the *apostles*, or the *bishops* their *successors* by Christ. And as the *state* granted these, they may recall them, if there be sufficient reason for it.

Exception of the  
real spiritual  
commission of  
Christ to his mi-  
nisters.

“ That in that very commission before mentioned, which was given to *Granmer* for his *bishoprick*, there is an exception, *per & ultra ea, quæ tibi ex sacris literis divinitus commissa esse dignoscuntur*; (i. e.) over and above those powers and authorities, which the holy scriptures do testify are given to thee by God. These the king did not take upon him to grant. But only what was over and above these, that is, the protection and civil privileges granted by the *state*, which were annexed to fortify and encourage these. And take notice, that that of which the king is here called the head and fountain, is *omnium magistratum*, of all the magistracy within his dominions, as well

well ecclesiastical as temporal. There is a civil magistracy annexed by the laws to the ecclesiastical jurisdiction. And of this only ought these expressions to be meant; because we see the other, the spiritual authority, which in holy scripture is granted to the church, is expressly excepted. And that ecclesiastical authority, which in this commission is said to flow from the king, is, *juris dicendi autoritas*, & *quæcunque ad forum ecclesiasticum pertinent*. That is, the episcopal jurisdiction, considered as a forum, a court established by the secular power, and part of the laws of the land,

To what the king's supremacy confined.

“ That in the said Hist. of the Reformation, part I. in the addenda, n. v. p. 321, there is a declaration made of the function and divine institution of bishops and priests, subscribed by the lord Cromwell, then vicegerent to king H. VIII. in ecclesiastical matters, by archbishop Cranmer, with the archbishop of York, eleven other bishops, and twenty divines and canonists, declaring that the power of the keys, and other church functions, is formally distinct from the civil power, &c. And ibid. Collect. Rec. n. x. p. 177. There is the judgment of eight bishops concerning the king's supremacy, whereof Cranmer the first asserting, that the commission, which Christ gave his church had no respect to kings or princes power; but that the church had it by the word of God, to which

The power of the church is by the word of God.



*which Christian princes acknowledge themselves subject. They deny, that the commission Christ gave to his church did extend to civil power over kings and princes. And they own, that the civil power was over bishops and priests, as well as other subjects, that is, in civil matters; but they assert, that bishops and priests have the charge of souls, are the messengers of Christ to teach the truth of his gospel, and to loose and bind sin, &c.; as Christ was the messenger of his Father, which sure was independent of all kings and powers upon earth."*

No spiritual ministerial power in queen Elizabeth given by the act.

The act of parliament, by which the spiritual or ecclesiastical supremacy was reinvested in queen Elizabeth, does not express to give to the queen that plenitude of real *spiritual* power, which had ever been exercised in this or any other nation by the ministers of the gospel, but such power only, as had been exercised within this realm in matters evidently comprized in or arising out of the *civil* establishment of religion. The act contains not a word of the power of preaching, teaching, administering the sacraments, or chastising by *spiritual* censures or excommunication; and to these instances alone are confined the true *spiritual* weapons, power, authority, or jurisdiction, by which the ministers of God carry on the work of their divine

divine mission. \* “ And that also it may likewise please your highness, that it may be established and enacted by the authority aforesaid, that † such jurisdiction, privileges, superiorities, and preheminencies, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority *hath heretofore been, or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities, shall for ever by authority of this present parliament be united and annexed to the imperial crown of this realm.*”

I presume not to enter into a theological investigation of the spiritual rights and prerogatives of the clergy in their different degrees, from the archbishop to the curate, but

The author's intent only to consider what powers passed to the king by the different acts of parliament.

\* 1 Eliz. c. 1. sect. xvii.

† Particular attention is to be paid to these words of reference, which import not to give any absolute *spiritual* or *ecclesiastical* jurisdiction, authority, or power, but such only as *had been before, or lawfully might be exercised or used*. The effect therefore of this statute can only be ascertained by considering, first how far the kings of England were the heads of the civil establishment of religion; and secondly how far lay persons are capable of *real spiritual* jurisdiction.

only

only to discuss, as a lawyer, the right, power, authority, or prerogative transferred, annexed, or confirmed unto, or revived, vested, or acknowledged in the person of our sovereign, by different acts of parliament now in force. In this light only I wish, or rather claim a right to be judged; for if in handling these sublime subjects, I have in any instance misrepresented or mistated the theological and real principles of the divines of any church or religion whatsoever, I profess to speak under correction, and openly disavow any intention of mistating, misrepresenting, or controverting their respective doctrines. In treating the connection of the church with the state, the incorporation of a religious establishment in the constitution and the adoption of certain political principles by different religious societies and congregations, I have endeavoured, and shall continue to endeavour, studiously to avoid entering into the internal evidence or merits of the different *religious* doctrines, which I shall have occasion to mention, or refer to in the course of this work.

The authority of parliament conclusive in all that it has jurisdiction over, provided it contradict not the law of God.

After what I have already said, I hope it will be thought useless to adduce arguments to prove, that every act of parliament is binding and conclusive upon each individual

of

of the community, provided the subject matter of the act be in its nature liable to the jurisdiction of human authority and the thing enacted contradict not the law of God. Hence lord Hardwicke said, when he determined the great question, that the canons of 1603 did not, *proprio vigore*, bind the laity; \* “by reason of this representation every man is said to be party to, and the consent of every subject is included in an act of parliament.”

As the community of this kingdom has thought proper to make a civil establishment of religion, so has it naturally made the king the supreme head of that establishment; but as the incorporation of a religious establishment with the constitution is founded upon the assent of the community, so from that consent must originate all the power or authority of the supreme head of that establishment; and if it originated from the people, with the people it must for ever unalienably reside. Whatever right, pre-eminence, jurisdiction, or authority are vested in the king in this quality or capacity, are vested in him by one and the same title, as all the other prerogatives of the crown; for it appears as clear, as the first proposition of

Natural to make the king the head of the civil establishment.

King, qua reg. can have no spiritual power over the church of God.

\* Strange's Reports, 1056, *Middleton v. Croft*.

Euclid, that the king never had and never can have (as king) any real true *spiritual* power or authority over the whole or any part of the church of Christ ; but that over the *civil* establishment of the church of England he ever had, and now has, and ever will have, just so much right, power, pre-eminence, authority, and jurisdiction, as the representatives of the nation shall choose to admit and allow of.

The first or negative part of this assertion is made so clear by the declaration or act of the convocation in 1562, that I shall add nothing more upon it. \* “ For the bishops and clergy, in their convocation of the year 1562, by the queen’s authority and consent, declared more plainly, viz. *That they gave not to their princeſs by virtue of the ſaid act or otherwiſe, either miniſtering of God’s word or ſacraments, but that only prerogative, which they ſaw to have been given always to all godly princeſs in holy ſcripture by God himſelf ; that is to ſay, that they ſhould rule all eſtates and degrees committed to their charge by God, whether they be eccleſiaſtical or temporal, and reſtrain with the civil ſword the ſtubborn and evil doers.*”

The countenance and ſupport which the church receives from the ſtate were well ex-

\* Godol. Repertor. Can. p. 11.

pressed in the speech which King Edgar of old made to the English clergy. \* “ I (saith he) have the sword of Constantine, you the sword of Peter ; let us join our hands and swords, that we may drive out the lepers from the camp, and so purify the sanctuary of the Lord. *Ego Constantini, vos Petri gladium habetis : jungamus dextras & gladium gladio copulemus, ut ejiciantur extra castra leprosi, & purgetur sanctuarium Domini.*” In this junction of hands and weapons originated and consists the alliance between church and state.

The sword of Constantine different from the sword of Peter.

Some few instances will evince, as well as many, that the whole *ecclesiastical* jurisdiction, or power, which could produce any civil effect, acquired its establishment only from the consent of the people ; for, from the days of our Saxon ancestors, we see the bishops acting jointly with the civil magistrates in the hundred courts, and probably judging by one and the same law ; and we then find the establishment of separate ecclesiastical courts to judge by the civil and canon law made by parliamentary authority. † “ Before the time of King *William the Conqueror*, all matters, as well spiritual as temporal, were determined in the *hundred courts*, where

Ecclesiastical court erected by the civil.

\* Godolphin, p. 97.

† God. Rep. Can. p. 96.

was wont to fit one bishop and one temporal judge, called *aldermanus*; the one for matters of *spiritual*, the other of *temporal* cognizance; but that was altered by King *William* (and it seems by parliament; for it was by the consent of bishops, abbots, and all the chief persons of the realm); for he ordained, that the bishops or archdeacons should not hold plea of the episcopal laws, and *quæ ad regimen animarum pertinent*, in the hundred, but by themselves, and there administer justice, not according to the law of the hundred, but according to the episcopal laws and canons." So from hence infers Nathaniel Bacon, in his discourses upon the laws and government of England; \* "their first foundation was laid by the civil power of a law in the time of William the first Norman king; yet the power of the pope and bishop growing up together, they came to hold the power of the keys by a *divine right*, and so continued until these times of Henry VIII. wherein they have a retrospect to the rock, from whence they were first hewn." And this same author, who seems but little biassed to popes, kings, and prelates, acknowledges, that the pope † "had holden a power, *supra ordinary*, over

\* Part ii. p. 139.

† Ibid. p. 135.

all appeals, by gaining the definitive sentence to the Roman see, by the space of four hundred years." A right of this nature, continued for such a length of time to be assented to by a free, powerful, and independent community can with no propriety be called an usurpation. It was a grant made and confirmed to the bishop of Rome by the nation; who were as free to revoke, as they had been to make it. I submit to my readers, that we should think and speak of these appeals to the juridical courts of Rome, as Bacon does of the old forms of the ecclesiastical courts in this kingdom. \* "Nevertheless the courts still hold on their course, according to their old laws and customs, for their form of proceedings; some say by *prescription*, yet more rightly by *permission*." I therefore think myself bound to say, that such appeals were at the time of the reformation made to Rome by the *ancient custom* of the realm; else how could Bacon himself have owned, that† "the matter concerning the divorce of the Lady Catherine Dowager came before the pope by appeal, and there depended; the king himself also waiting upon that see for justice, and a definitive sentence upon that matter; and

Appeals to Rome by the grant or consent of the nation.

How these former appeals to Rome should be considered.

\* Nat. Bac. ubi supra, 138.

† *Ibid.* 137.

T

thereby



thereby acknowledge the pope's power *de facto*."

The measures pursued to transfer the headship of the civil establishment from the pope to the king.

I shall not attempt to sift the motives, which induced King Henry VIII. and the nation to change this ancient custom of the realm, though we ought not to lose sight of the steps or measures, which were pursued to effect it. \* "In the year 1530, 22 Hen. VIII. the clergy being caught in a *premunire*, were willing to redeem their danger by a sum of money, and to that end the clergy of the province of *Canterbury* bestowed upon the king the sum of 100,000*l.* to be paid by equal portions in the same year following; but the king would not be satisfied, unless they would acknowledge him for the *supreme head on earth for the church of England*, which though it was hard meat, and would not easily go down amongst them, yet it passed at last; for being *thoroughly debated in a synodical way*, both in the upper and lower houses of convocation, they did *in fine* agree upon this expression, *Cujus ecclesiæ (sc. Anglicanæ) singularem protectorem, unicum & supremum dominum & (quantum per Christi leges licet) supremum caput ipsius majestatem recognoscimus*. To this they all consented, and subscribed their hands,

\* Heylin's Reformation of England justified, p. 5, 6.

and afterwards incorporated into the public act or instrument, which was presented to the king in the name of his clergy. On this ground were built the statutes, prohibiting all appeals to Rome, and for determining all ecclesiastical suits and controversies within the kingdom, 24 Hen. VIII. c. 12. that for the manner of electing and consecrating of archbishops and bishops, 25 Hen. VIII. c. 20. and the prohibiting the payment of all impositions to the court of Rome; and for obtaining all such dispensations from the see of Canterbury, which formerly were procured from the popes of Rome, 25 Hen. VIII. c. 21; which last is built expressly upon the foundation, that the king is the only supreme head of the Church of England, and was so recognized by the prelates and clergy representing the said church in their convocation. And on the very same foundation was the statute raised, 26 Hen. VIII. c. 1. wherein the king is declared to be the supreme head of the church of England, and to have all honour and prebeminences, which were annexed unto that title, as by the act itself doth at full appear; which act being made (I speak it from the act itself) only for corroboration and confirmation of that, which had been done in the convocation, did afterwards draw on the statute for the tithes and first-fruits, as the point incident to

the headship or supreme authority, 26 Hen. VIII. c. 3."

In this act of the 24th of Hen. VIII. it must be remarked, that although by the first part of it, the community reclaimed those rights and privileges, which they had permitted the court of Rome to enjoy for so many centuries, which it was competent for them to do, yet by the second part of the act, they appear to have exceeded their power, by enjoining the clergy, or the ministers of the gospel, to exercise their *spiritual* functions, notwithstanding any suspension, inhibition, interdiction, or excommunication from the see of Rome, although the English clergy, who were then in orders, acknowledged the bishop of Rome as their spiritual superior. Now as holy ordination by the imposition of hands, according to the doctrine of the clergy then living, conferred a faculty or a power of a *pure spiritual* nature, so the obligation or lawfulness of exercising those powers or faculties must essentially have depended upon the jurisdiction or authority of the real spiritual superior, to whom the party ordained acknowledged subjection; as if for instance the excommunicated Simon, Hymeneus, or Alexander, had been in orders, no edict nor decree of the Roman emperor, or senate, or other

The lawfulness of exercising the sacerdotal faculties depends upon the spiritual power that confers them.

other temporal power, could have justified, much less enjoined them to exercise their sacerdotal ministry, whilst they are disabled from doing it lawfully by their spiritual excommunication. The power, which imposed the disability, could alone remove it. The excommunicated person was in no possible way civilly affected by the spiritual sentence, consequently before any civil tribunal he was completely *coram non judice*; but our parliament was to all intents a civil tribunal or power, therefore absolutely incompetent to take any cognizance of matter *merely spiritual*. It will avail nothing to suggest, that the part, which the lords *spiritual* had in our legislation, rendered it a jurisdiction competent to determine such matter, since if every member in both houses, as well as the king himself, were in holy orders, being the representatives of the people, and drawing their legislative power from their delegation, they would be as little capable of deciding upon a mere spiritual matter in that capacity, as they now are; as for this very reason are all our *ecclesiastical* courts, as I have explained them, incompetent to do it.

Our parliament  
a civil judica-  
ture.

Nathaniel Bacon very pointedly marks what powers, in his opinion, this act of the 24th of Hen. VIII. vested, or confirmed, or  
recog-

recognized in the king. \* “ First, it is a visitatory, or a reforming power, which is executed by enquiry of offences against laws established, and by executing such laws. Secondly, it is an *ordinary jurisdiction*; for it is such, as by any spiritual authority may be acted against irregularities; and thus the title *supreme ordinary* is conferred. Thirdly, it is such a power as must be regulated by law, and in such manner as by any spiritual authority may lawfully be reformed. It is not therefore any absolute *arbitrary power*, for that belongs only to the supreme head in heaven; nor is it any *legislative power*; for so the law should be the birth of this power, and his power could not then be regulated by the law; nor could every ordinary execute such a power; nor did Henry VIII. ever make claim to any such power, though he loved to be much trusted. Lastly, this power was such a power, as was gained formerly from the king by foreign usurpation, which must be intended *de rebus licitis*, and once in possession of the crown, or in-right thereto belonging according to the law; for the king hath no power thereby to confer church-livings by provisorship, or to carry the keys, and turn the infallible chair

\* Bacon, ubi supra.

into an infallible throne. In brief, this power was such as the king hath in the commonwealth; neither legislative, nor absolute in the executive, but in order to the unity and peace of the kingdom: this was the right of the crown, which was ever claimed, but not enjoyed further, than the *English* sceptre was able to match the *Romish* keys; and now the same being restored by act of parliament, is also confirmed by an oath enjoined to be taken by the people, binding them to acknowledge the king under God supreme head on earth of the church of England, Ireland, and the king's dominions, in opposition to all foreign jurisdiction; and lastly, by a law, which bound all the people to maintain the king's title of *defender of the faith, and of the church of England and Ireland, in earth the supreme head*, under the peril of *treason* in every one, that shall attempt to deprive the crown of that title."

Oath of supremacy.

I scarcely need remind my reader, that the only human authority to which an English subject is bound to submit, are the common law and the statute law of the realm; the legal decisions of our common law courts make a part of the common law; and I am therefore peculiarly happy in being able to proceed under this authoritative sanction in  
my

The decisions of our common law courts make a part of our common law.

my inquiries into the nature and extent of that right, power, preeminence, dignity, and authority arising out of the civil establishment of religion, which the constitution annexes to our sovereign lord the king, as the supreme head of such establishment. If any situation can display the plenitude of power, which his majesty possesses, as the *supreme head of the church of England*, it certainly is, when he acts as the head of the convocation of the bishops and clergy regularly convened.

How far the  
convocation can  
make laws.

Concerning the authority of these canons, and consequently the power of convocation to make laws with the royal assent and approbation, great disputes have been formerly carried on, but the matter seems now finally settled in the case \* of *Middleton and Croft*, Mich. 10 Geo. II. in which lord Hardwicke, then lord chief justice of the king's bench, delivered the resolution of the court to this effect: " One point in this cause is, whether the makers of the canons of 1603, had a power to bind the laity? They were made by the bishops and clergy in convocation assembled by virtue of the king's writ, and confirmed by his charter un-

\* *Strange's Rep.* 1056.

der the great seal, but the defect objected to them is, that they were never confirmed by parliament; and for this reason, though they bind the clergy of the realm, yet they cannot bind the laity, for want of a parliamentary confirmation. And some of the counsel in their argument seemed to admit it, by putting the case upon the foot of the ancient canon law; but as the other counsel, who argued on that side, did not give it up, it is become necessary to examine and determine a point of so great moment to the constitution of England, in order to settle the law thereupon; and on the best consideration we have been able to give it, we are all of opinion, that, *proprio vigore*, the canons of 1603 do not bind the laity; I say, *proprio vigore*, because some of them are only declaratory of the ancient canon law.

Canons do not,  
*proprio vigore*,  
bind the laity.

“ Upon this important question therefore, it is proper for judges to proceed upon surer foundations, which are the general nature and fundamental principles of our constitution, acts of parliament, and resolutions and judicial opinions in our books, and from these to draw our conclusions.

“ No new law can be made to bind the whole people of this land, but by the king, with the advice and consent of both houses

No law can be  
made binding  
but by parliament.

of



of parliament, and by their united authority. Neither the king alone, nor the king with the concurrence of any particular number or order of men, hath this high power. The binding force of these acts of parliament arises from that prerogative, which is in the king our sovereign liege lord; from that personal right, which is inherent in the peers and lords of parliament to bind themselves, and their heirs and successors in their honours and dignities; from the delegated power vested in the commons as representatives of the people: by reason of this representation every man is said to be party to, and the consent of every subject is included in an act of parliament.

“ But in canons made in convocation, and confirmed by the crown only, all these requisites are wanting, except the regal assent; there is no intervention of the peers of the realm, nor any representation of the commons.”

Canons may acquire the force of laws by sufferance, recognition, or confirmation.

It is to be observed, that lord Hardwicke marks a difference between the new canons of 1603, and such as are declaratory of the ancient canon law; because the former never having been confirmed by parliament, must stand upon their own strength only, *proprio vigore*; whereas the latter may have acquired

acquired strength from an express or implied confirmation by parliament, long usage, sufferance, acquiescence, or assent. This he explains by the example of the Roman empire after it became Christian. \* " Hence arises the distinction between canons made in ancient councils, confirmed by the empire after it became Christian, and those made here. The emperor, according to Justinian and the digest, had a legislative power; and when they received his confirmation, they had their full authority; but this is not the case here; the crown hath not the full legislative power; and it is therefore rightly said in Salkeid, 673, that the king's consent to a canon in *re ecclesiastica* makes it a law to bind the clergy, but not the laity; and no one can say that the consent of the people is included in the royal confirmation."

No canon can become binding till confirmed by the legislative power.

He says moreover, " that it would be absurd that the clergy should have it in their power to enact new laws, for disobeying which the laity shall incur the penalty of excommunication, which is to be carried into execution by the loss of their liberty, and a disability to sue for and dispose of their personal estates; this would certainly be to affect

\* Strange's Rep. 1056.

The clergy by synodical acts cannot charge the laity.

Headship or supremacy of the civil establishment translated from the pope to the king.

the laity in their property in a very high degree; and yet it is admitted, that the clergy by synodical acts cannot charge the property of the laity." And his lordship further remarks, and seems to lay it down as a received axiom, "that the true use of these confirmations (of canons) in parliament was the extension of such constitutions over the laity, who would otherwise not be bound."

It appears therefore clear, that even upon ecclesiastical or spiritual matters, there is no other legislative power in this state, but that of parliament; and no power can civilly bind the people but the legislative. Now all such right, power, preeminence, dignity, jurisdiction, and authority, which could possibly produce any civil effect in this country, were by this act of translation vested or recognized in future in the king alone, as by the free assent of the people had in great measure been allowed for many centuries to the pope. "This translation, says the bishop of Worcester, \* "was the circumstance of all others, which most favoured the sudden growth of the imperial power in this nation." The arbitrary and restless disposition of this monarch, and the servile pliancy of his people,

\* Mor. & Pol. Dial. vol. ii. p. 275.

equally conspired together to raise that thunder storm under the Tudors, that burst with such direful effects upon the heads of the Stuarts.

\* “ We see then, as I have said, how conveniently the minds of men were prepared to acquiesce in Henry’s usurped prerogative. And it is well known, that this prince was not of a temper to balk his expectations. The sequel of his reign shews, that he took himself to be invested with the whole ecclesiastical power, *legislative* as well as executive ; nay, that he was willing to extend his acknowledged right of supremacy, even to the ancient papal infallibility, as appears from his sovereign decisions in all matters of faith and doctrine.”

King Henry’s  
exorbitant notions  
of his own  
supremacy.

In order to render this headship or supremacy of the king over the civil establishment of religion, which had formerly been allowed in great measure to the pope the more palatable to the nation, it was thought adviseable to procure an act of submission from the clergy themselves ; for although the actual consent of each individual clergyman, as a member of the community, was included in the act of parliament, yet inasmuch

The act of the  
submission of  
the clergy procured  
to render the translation  
palatable to the  
public.

\* Mor. & Pol. Dial. vol. ii. p. 283.

as the clergy were in some senses a body distinguished and divided from the laity, it was thought, that their submission might afford satisfaction and conviction to the wavering and less informed part of the community, though it could in fact add no degree either of coercion or obligation to the act of parliament, which without any such special submission of the clergy, would have been equally binding and conclusive upon the nation. As upon this submission of the clergy were founded and settled the rights and powers, as well as the duties and obligations both of the convocation and of the king as their supreme head, it will not perhaps be unacceptable to my readers to see that transaction represented by a very learned and respectable divine of the established church.

What this submission of the clergy was.

\* “ The second step to the *ejection of the pope* was the *submission of the clergy* to the said king *Henry*, whom they had recognized for their supreme head. And this was first concluded on in the *convocation*, before it was proposed or agitated in the *houses of parliament*, and was recommended only to the care of the *parliament*, that it might have the force of a law by a civil sanction. The

\* Dr. Heylin's Reformation of England justified, p. 6 & 7.

whole

whole debate, with all the traverses and emergent difficulties, which appeared therein, are specified at large in the records of convocation, *anno* 1532. But being you have not opportunity to consult those records, I shall prove it by the *act of parliament*, called commonly *the Act of Submission of the Clergy*; but bearing this title in the *abridgment of the statutes* set out by Poulton, *that the clergy in their convocations shall enact no constitutions without the king's assent*. In which it is premised for granted, that the clergy of the realm of England had not only acknowledged, according to the truth, that the convocation of the same clergy is, always hath been, and ought to be assembled always by the king's writ; but also submitting themselves to the king's majesty, had promised, *in verbo sacerdotis*, that they would never from henceforth presume to attempt, alleadge, claim, or put in ure, enact, promulge, or execute any new canons, constitutions, ordinances provincial, or other, or by whatsoever other name they shall be called in the convocation, unless the king's most royal assent may to them be had, to make, promulge, and execute the same; and that his majesty do give his most royal assent and authority in that behalf.

“ Upon

Parliament act  
upon this act of  
submission of  
the clergy.

“ Upon which ground-work of the clergies, the parliament shortly after built this superstructure to the same effect, viz.

“ *That none of the said clergy from henceforth should presume to attempt, alleadge, claim, or put in ure, any constitutions, or ordinances provincial, or synodales, or any other canons ; nor shall enact, promulge, or execute any such canons, constitutions, or ordinances provincial, ( by whatsoever name or names they may be called ) in their convocations in time coming ( which always shall be assembled by the king's writ ) unless the same clergy may have the king's most royal assent and licence to make, promulge, and execute such canons, constitutions, and ordinances provincial or synodical, upon pain of every one of the said clergy doing the contrary to this act, and thereof convicted, to suffer imprisonment, and make fine at the king's will, 25 Hen. VIII. c. 19.*

“ So that the statute in effect is no more than this : an act to bind the clergy to perform their promise, to keep them fast unto their word for the time to come, that no new canon should be made in the times succeeding in the favour of the pope, or by his authority, or to the diminution of the king's royal prerogative, or contrary to the laws and statutes

statutes of this realm of *England*, as many *papal constitutions* were in the former ages; which statute I desire you to take notice of, because it is the rule and measure of the church's power in making canons, constitutions, or whatsoever else you shall please to call them, in their convocations.

“ The third and final act, conducing to the pope's ejection, was an *act of parliament*, 28 Hen. VIII. c. 10. intituled, *An act extinguishing the authority of the bishop of Rome*; by which it was enacted, *that if any person should extol the authority of the bishop of Rome, he should incur the penalty of a præmunire; that every officer, both ecclesiastical and lay, should be sworn to renounce the said bishop and his authority, and to resist it to his power, and to repute any oath formerly taken in maintenance of the said bishop, or his authority, to be void; and finally, that the refusal of the said oath should be judged high treason*: but this was also ushered in by the determination first, and after by the practice of all the clergy; for in the year 1534, which was two years before the passing of this act, the king had sent this proposition to be agitated in both *universities*, and in the greatest and most famous *monasteries* of the kingdom; that is to say, *An aliquid autoritatis in hoc regno Angliæ*

The opinion taken of the universities and monasteries upon the pope's supremacy.



*pontifici Romano, de jure competat, plusquam aliis cuicunque episcopo extero?* By whom it was determined negatively, that the bishop of *Rome* had no more power of right in the kingdom of *England*, than any other foreign bishop. Which being testified and returned under the hands and seals respectively (the originals whereof are still remaining in the library of Sir Robert Cotton) was a good preamble to the bishops and the rest of the clergy assembled in their convocation to conclude the like; and so accordingly they did, and made *an instrument* thereof subscribed by the hands of all the bishops, and others of the clergy, and afterwards confirmed the same by their corporal oaths.”

The question proposed was captious.

It must be observed, that the question, which this learned divine informs us was agitated and resolved by both universities, and the greatest and most famous monasteries of the kingdom, was captious upon the face of it, and might have been understood to relate to or concern the civil establishment of religion in England, and not that real spiritual primacy or vicegerency of Christ over the Christian church, which, as Roman catholics, they acknowledged in the pope. For when it is asked, *whether the pope of Rome hath of right any more authority within the kingdom of England,*

land, than any other foreign bishop? I answer, that this necessarily involves the idea of the civil establishment of the church of England, which alone could affect the civil or temporal power of the state; for the pope of Rome, or any other foreign bishop, can only be represented as *foreign*, in as much as he receives an authority from some other nation or community, than that of England; but whatever authority can be given by a nation or a lay community, can be no other than *temporal* or *civil*, as I have before shewn; therefore this question in strictness ought not to be understood of mere *spiritual* authority, or in fact of that authority or jurisdiction, which the Roman catholic church allows to the pope of Rome, as to her *spiritual* supreme head. I should therefore think this question *politically, legally, philosophically, and theologically*, resolved by the following answer: The kingdom of England acknowledges no independent right, either in the pope or any other bishop, to exercise any authority whatever, that can produce, *proprio vigore*, a *civil* effect upon the subjects of this realm. I have before shewn, or endeavoured to shew, that all power or jurisdiction, which produces civil effects, cannot be purely *spiritual*; and therefore I conclude, that the negative an-

The true meaning of the question and its solution.

swer to this question, if rightly and fairly understood, though it were a renunciation of the pope's power, authority, or jurisdiction over the civil establishment of the church of England, against the consent of the community, or without an act of parliament, yet it left untouched that real *spiritual primacy* over the church of Christ, which the Roman catholics of all ages, and of all countries, have made the bond of their communion with the see of Rome. For according to their doctrine, the church, which they maintain to be *catholic* or universal, cannot by possibility be dissected into political or geographical divisions; the term *foreign* therefore is not applicable in a spiritual or ecclesiastical sense, by one member of their church to another; much less is it applicable to the head of their church, whom they look upon as the common father of all in Christ, whose sacred functions and character of *spiritual primate*, according to them, exclude all diversity of nations, and unite all the members of the church in one family or communion \*. As  
St.

\* I have said thus much upon this subject, to shew how greatly owing to misapprehension and misrepresentation are all the heated controversies between the church of England and the church of Rome, about the *spiritual supremacy* of the king of England. Perhaps  
few

St. Peter at Rome could not in the primitive church have been called a foreign bishop, either by a Grecian, Idumean, or Roman Christian. I have spoken more largely upon this doctrine, because it was the belief of the universities and monasteries, to whom this question was proposed; and therefore the answer to it will be the more fairly understood by the exposition of the doctrine of those, who gave it.

The true constitutional sense of the oath of supremacy.

In order to form a perfectly unbiassed and true judgment of the opinion given by these divines upon this question of king Henry's, we must fully enter into the spirit, influence, and even prejudices of the persons, who gave it. As Roman catholics they were from principle tenaciously anxious to avoid any innovation in their doctrine or faith, particularly at a time when a spirit of innovation seemed to have pervaded most countries in Europe. The clergy were even more than the laity in awe and dread of the arbitrary and despotic disposition of their sovereign; and from a mean self-interested policy, which

Temporizing pliancy of the divines under king Henry VIII.

few Roman catholics would refuse to swear to it, in the true constitutional sense of its actual existence, were it unequivocally expressed, that the king is the supreme head of the *civil* establishment of the church of England.

too frequently actuates mankind, they evidently attempted to gratify the dreadful ambition of king Henry, without making an express renunciation of any article of their own religious belief. For if the quære proposed by the king related only to any right, power, authority, or jurisdiction, the exercise of which could produce a civil effect in this country, it is evident, that as such civil effect could not have been produced without the assent or permission of this community, so the right to any power, that could produce it, could neither exist in the bishop of Rome, nor in any other bishop of christendom, independently of the community, which was to submit to the civil effects of that power or jurisdiction.

If therefore these divines, under a reservation or salvo to their consciences, expressed their opinion only of the supremacy or headship of the civil establishment of religion in this country, it cannot be said, that their answer deviated from any principle of the faith and doctrine, which they then professed; but they were called upon in candour so clearly to express the difference betwixt the real spiritual jurisdiction of the church, and the jurisdiction and authority of the civil establishment of religion in this country,

that

that the exposition of the real state of the question to the nation would completely do away the insidious and captious purport of the question put by the king. For it cannot be denied, that as for nearly a thousand years the headship or supremacy of the civil establishment of religion in this country had been vested by the act of the nation principally in the bishop of Rome, in whom they also admitted the real spiritual supremacy of their church to subsist, it was not easy for the community at large to distinguish between these two capacities in the same person; and thus I account for the purport and tendency of all the acts of parliament upon this subject being, particularly in those times of heat and animosity, misconceived and misrepresented.

The reason why most acts relating to the supremacy are misrepresented.

That the civil establishment of religion is merely accessory to the religion itself, will not, I presume, be denied; for were it essential to a religion, that religion could no where exist, where a civil establishment was wanting. This is emphatically exemplified in our own country at this hour; for the Roman catholic religion, which the divines, of whose opinion I am now speaking, professed, is still also professed and kept up by some individuals in this country, without the countenance

A civil establishment not essential to religion.

Exemplified by the state of the Roman catholics in this country at present.

nance or support of any civil sanction or establishment whatever. And if the present Roman catholics of England should pretend, that the religion, which they now profess, differs in any one essential point from that religion, which their ancestors professed whilst the Roman catholic religion was countenanced and established by the law of this country, they will immediately give up their distinctive characteristic, and boasted glory of *unity, universality, and irreformability*. At this day they submit, as they formerly did, to the spiritual supremacy of the bishop of Rome; but they cannot admit him to be the supreme head of the civil establishment of religion in this country, because their religion has neither civil sanction nor establishment in it. They submit to the *spiritual* power and jurisdiction of their own bishops, who are not now recognized by the state, as fully as they did, when they were in possession of the temporalities, and other civil advantages of English bishopricks. They receive their sacrament of matrimony from their own priests as fully at present, as they formerly did, though no civil effect be produced by the administration of it. In a word, their bishops and priests are now endowed with the same spiritual powers of preaching, teaching,

ing, and administering the word of God to their flocks, as they formerly were, when the constitution acknowledged them as a distinct part of the community, and invested them with political and other civil capacities and advantages.

In virtue of this spiritual headship or supremacy of the king over the civil establishment of religion, which the constitution now gives him, he has authority \* “ to convene, prorogue, restrain, regulate, and dissolve all ecclesiastical synods or conventions; he has the right of nomination to vacant bishopricks, and certain other ecclesiastical preferments, and is the dernier resort in all ecclesiastical causes, an appeal lying ultimately to him in chancery from the sentence of every ecclesiastical judge.

It may be urged, that if the king be enabled to appoint to vacant bishopricks, he must necessarily be legally authorized and empowered to confer a spiritual power or divine mission; for the spiritual power of a Christian bishop can only be limited in its extent of jurisdiction by a power that can controul him in his *spiritual* capacity; but if the king can controul or limit the *spiritual*

The rights of the king, as supreme head of the civil establishment of the church of England.

Whether the power of appointing argue a divine mission.

\* Black. Com. b. i. c. 7. sect. 5.

jurisdiction



jurisdiction of a bishop, the bishop is subject to the king in his real spiritual character; and therefore by the constitution of our laws, the king is more than merely the supreme head of the *civil* establishment of religion. In answer to this it may be said, that the king's appointment to a bishoprick operates in a similar manner, as does the presentation of a lay patron to a living; the clerk appointed cannot acquire any cure of souls or spiritual charge, if he be not properly ordained; and his jurisdiction no more exceeds the limits of his parish, than that of a bishop does those of his diocese; yet from the alliance between church and state, where there is a civil establishment of religion, the civil and the spiritual power so far accommodate themselves to each other, as to avoid any confusion from their respective jurisdictions; and this has been always attended to in all Christian countries, where the Christian religion had acquired a civil establishment, as it is clearly and constitutionally explained in a book published in the year 1701, commonly attributed to bishop Fleetwood.

Original distribution of dioceses.

\* "The apostles' commission reaching to

\* Account of Church Government and Governors, p. 39, & seq.

all

all parts of the world, and they being commanded to *make all nations disciples, to go into all the world, and to preach the gospel to every creature*, (Matt. xviii. 19.) could not be long fixed to any one place; yet it was necessary that *pastors* and *teachers* should be settled among all believers, who might continue to instruct and teach them, to offer up prayers for them in the public assemblies, and to administer the sacrament to them. Hereupon they ordained them elders in every church; (Acts i. 14, 23.) that is, a bishop with a competent number of presbyters and deacons to assist him, as will be evident from what shall be said hereafter. (Heb. xiii. 7, 17.) These were rulers of the church wherein they were placed, and the people were commanded to obey them. But though they were rulers, yet their authority extended not over the whole church, but only that flock over which the *Holy Ghost* (Acts xx. 28.) had made them *overseers* or *bishops*. They were fixed to a particular place, and the spiritual government of all persons within those limits was committed to them; and in this division into particular districts (which was prudential at the apostles discretion) the general division of the empire was observed. It was necessary that particular churches should

The spiritual division generally accommodated to the civil division of dioceses.

should be circumscribed within certain bounds; but it was indifferent where those boundaries should be fixed. The apostles therefore took the limits already laid out for them, and accordingly settled churches, and either (Tit. i. 1, 5.) ordained themselves, or appointed others to ordain elders in every city, or city by city, as Dr. Hammond renders it. And herein they thought it expedient strictly to observe the imperial division; so that the council of Chalcedon decreed, (6 Can. 17.) that if the emperor should change the condition of a city by his authority, the order of the parish churches should follow the civil constitution. Thus the power of these elders was confined within the compass of that particular city and its territories, where they were ordained to minister; and all within those limits were under their care and jurisdiction. They were, indeed, bishops and presbyters of the universal church, (for the true church is but one and the same in all parts of the world) but for the sake of decency and order, and that each pastor might know his own peculiar flock, it was necessary, that the catholic church should be divided into particular churches.\* For \* “whilst our Sa-

\* Account of Church Government and Governors, p. 36, 37.

viour lived on earth, he ruled and governed his church personally; and though the apostles could preach, and baptize, and pronounce remission of sins, which is the priests office now, yet could they not perform the functions of the episcopal office, to give others a commission to preach the gospel. But when Christ was risen, and ready to ascend into heaven, then he enlarged the apostolic power, and gave them authority to collect and settle churches, and to give commissions to others, as he himself had done. *As my Father hath sent me, says he, even so I send you. And when he had said this, he breathed on them, saying, receive ye the Holy Ghost. (John xx. 21.)*"

## C H A P. XI.

## OF THE PREROGATIVES OF THE CROWN.

More disputes  
about the title  
to the preroga-  
tives, than about  
the prerogatives  
themselves.

**I**T may be generally remarked, that the difference or dispute between most writers, is not so much about the prerogatives of the crown, as about the right and title to them. I have already endeavoured to render my opinion upon this matter unequivocal and explicit ; and the consequence of that opinion is, that as a member of the community, I entertain the most dutiful attachment to the person, in whom the community vests the executive power of the legislature, and the most awful and respectful deference for the distinguished and exalted properties, prerogatives, and powers, with which the community has found it adviseable to dignify him. Mr. Acherley, in a sort of allegorical exposition or direction of what this supreme head of the body ought to be, says, \* “ That the first and most excellent estate, or supreme head of this great body, should be a political supreme office, to guide and conduct the rest, and, for that reason, should be raised

\* *Britannic Constitution*, p. 39.

above the rest, which should be the *glory of the nation* ; and that, to add *majesty*, it should be crowned with a *crown* of pure gold, adorned with the richest gems, as *caput regni* ; that to this crown there should be annexed royal and *sovereign rights* and *prerogatives*, which should give it a lustre and a veneration suitable to the most *excellent* dignity ; that the single *person*, who should be declared supreme governor or head, to execute and administer his highest office, and to wear this crown, should be stiled *king*, and should have such honours paid him, as are due to royal and *imperial majesty* ; and that a *throne* should be raised for him, on which he should sit, when he performs the highest acts of government ; and that his *person* should be exempted from all coercive and offensive acts of violence whatsoever, upon or for any reason or pretence of any reason whatsoever ; and that the *first person*, who should be declared king, and all succeeding *kings*, should, at or soon after his assuming to exercise the regal power, be crowned with the greatest solemnity." And in another part of the same work, he describes the monarchy or regal office in this manner : \* " The bu-

The general prerogatives of the crown.

\* Acherley's Brit. Constit. p. 59.

The end of our  
monarchy.

finess and end of this *office* was to exercise and administer the regal power in guiding and governing the people of this nation, for the good of the whole body, in such manner as should be agreeable, and according to the rules and laws, which for that purpose should be agreed on and prescribed; and to assent and agree to the making such new laws, and to the changing and altering such old ones, as the two estates of lords and commons shall find necessary, and prepare, for the good government and protection of the people and nation; and that therefore the monarch, who should be placed in the supreme regal office, should be deemed and accounted the supreme governor; and that many of the *virtues* and *perfections* attributed to the *great Creator*, who governs the heavens, the earth, the seas, and all things therein, ought, in a human and subordinate sense and similitude, to be attributed to the person placed in this *supreme regal office*; such as fortitude, goodness, justice, mercy, wisdom, and activity."

I must here again entreat my readers, to keep in view the different distinctions I have before noticed between the *natural* and the *political* capacity of the king, between the *immediate* and *mediate* appointment of God,  
and

and also between the *legislative* and the *executive* power of government. The different prerogatives of the king, which he at this day enjoys, are very compendiously and accurately set forth by Mr. De Lolme:

\* “ It is however to be observed, that though in his political capacity of one of the constituent parts of the parliament, that is, with regard to the share allotted to him in the legislative authority, the king is undoubtedly sovereign, and only needs alledge his will, when he gives or refuses his assent to the bills presented to him; yet, in the exercise of his powers of government he is no more than a magistrate, and the laws, whether those, that existed before him, or those, to which by his assent he has given being, must direct his conduct, and bind him equally with his subjects. The king bound equally by the laws as his subjects.

“ The first prerogative of the king, in his capacity of supreme magistrate, has for its object the administration of justice.

“ 1°. He is the source of all judicial power in the state; he is the chief of all the courts of law, and the judges are only his substitutes; every thing is transacted in his name; the He is the source and administrator of all justice.

\* De Lolme’s *Constitution of England*, c. vi. p. 71. & seq.

X

judgments



judgments must be with his seal, and are executed by his officers.

All prosecutions in his name.

“ 2°. By a fiction of the law, he is looked upon as the universal proprietor of the kingdom; he is in consequence deemed directly concerned in all offences; and for that reason prosecutions are to be carried on in his name in the courts of law.

He is the source of mercy, and can pardon offences.

“ 3°. He can pardon offences, that is, remit the punishment that has been awarded in consequence of his prosecution.

He is the source of honour.

“ The second prerogative of the king is, to be the fountain of honour; that is, the distributor of titles and dignities; he creates the peers of the realm, as well as bestows the different degrees of inferior nobility: he moreover disposes of the different offices, either in the courts of law, or elsewhere.

Superintendent of commerce.

“ The king is the superintendent of commerce; he has the prerogative of regulating weights and measures; he alone can coin money, and can give a currency to foreign coin.

Head of the church of England.

“ He is the supreme head of the church \*. In this capacity he appoints the bishops and the two archbishops; and he alone can convene the assembly of the clergy. This as-

\* i. e. Of the civil establishment of the church of England, as before more fully explained.

sembly

sembly is formed in England on the model of the parliament; the bishops form the upper house; deputies from the dioceses, and from the several chapters, form the lower house: the assent of the king is likewise necessary to the validity of their acts or canons; and the king can prorogue or dissolve the convocation:

Convocation  
what.

“ He is in right of his crown the generalissimo of all sea or land forces whatever; he alone can levy troops, equip fleets, build fortresses, and fill all the posts in them.

Generalissimo  
of all sea and  
land forces.

“ He is, with regard to foreign nations, the representative and the depository of all the power and collective majesty of the nation; he sends and receives ambassadors; he contracts alliances; and has the prerogative of declaring war, and of making peace on whatever conditions he thinks proper.

He is the sole  
representative  
of the nation in  
foreign con-  
cerns.

“ In fine, what seems to carry so many powers to the height is, its being a fundamental maxim, that *the king can do no wrong*; which does not signify, however, that the king has not the power of doing ill, or, as it was pretended by certain persons in former times, that every thing he did was lawful; but only that he is above the reach of all courts of law whatever, and that his person is sacred and inviolable.”

His inability to  
do wrong.

His person  
sacred and  
inviolable.

False pretensions of modern illuminators to the knowledge of our constitution and laws.

Our ancestors anxious to transmit the reasons and principles of our constitution.

Amongst those, who may honour these sheets with a perusal, some may be unwilling to submit to a bare exposition of these constitutional prerogatives or rights of the crown; for their satisfaction I shall resort to the most ancient and respectable authors of antiquity, who will be allowed at least to have known, what was looked upon and holden to be the law of their days; though the reason, ground, and propriety of the law have only been revealed to the illuminating theorists of the present generation. Between five and six hundred years ago, at the very time when our ancestors, in their love and zeal for the liberties of the constitution, bequeathed to us their rights in their famous charter under Henry III. Bracton, as he tells us of himself\*, for the information at least of posterity, applied his mind with much attention and labour to scrutinize, disclose, and arrange in order the actions, opinions, and judgments of his worthy ancestors. At no period can I trace any vestiges of that extreme darkness and ignorance, which Drs.

\* Ad instructionem saltem minorum, ego Henricus de Bracton, animum erexi, ad vetera judicia justorum perscrutanda diligenter, non sine vigiliis & labore, facta ipsorum consilia & responsa, & quidquid inde notatu dignum inveni, in unam summam redigendo, &c. page

Price\* and Priestley insinuate our ancestors have been constantly kept in. Bracton, who was a judge under Henry III. proves, that this was not the spirit of the government of his days; nor does the great charter of our liberties, which is the first written formal act of parliament transmitted to us from our ancestors, bespeak any such spirit, wish, or intention, that then actuated the representatives of the nation. A very constitutional writer of the present century goes further, by denying almost the possibility of the charge. \* "As the worst evils of society flow from short-sighted or perverted judgments, the constitution (with a policy peculiar to itself) encourages every method of popular instruction. Freedom of debate in parliament tends to clear and lay open the grounds of public proceedings; and the liberty of the press is as naturally fitted to the support of a good government, as to the ruin of a bad one. Measures, which carry with them a fallacious appearance of lenity, are exposed by this mean; and those, which carry with them the form of severity, but have the substance of strength and safety, are set in their just light, for the approbation of the people."

Our constitution formed to instruct.

\* Yorke's Considerations on the Law of Forfeiture, p. 4.

I feel therefore the consoling force of constitutional sanction, even in my humble efforts to disclose and explain the true sense, spirit, and principles of it to my countrymen.

The king's superiority in the state.

Under the evident attention to the difference between the *mediate* and *immediate* appointment of power by God, Bracton says of the king in his political capacity; \* “Every body is under him, and he is under nobody, unless it be under God. He has no equal in the realm, because he would then lose his command, since amongst equals there can be no one superior. But much more ought he not to have any one superior to, or more powerful than himself, for so would he become inferior to his own subjects, and those who are inferior cannot be equal to such, as are more powerful than themselves. The king therefore ought not to be subject to

\* Bract. c. 8. “Omnis quidem sub eo, et ipse sub nullo, nisi tantum sub Deo. Parem autem non habit in regno suo, quia sic amitteret præceptum, cum par in parem non habeat imperium. Item nec multò fortius superiorem, nec potentiozem habere debet, quia sic esset inferior sibi subjectis, & inferiores pares esse non possunt potentioribus. Ipse autem rex, non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem; attribuat igitur rex legi, quod lex attribuit ei, videlicet, dominationem & potestatem; non est enim rex, ubi dominatur voluntas & non lex.”

any

any man, but only under God and the law, because the law makes the king. Let the king therefore give to the law, what the law gives to the king, that is, authority and power; for there can be no king, where arbitrary will rules and not the law."

It is not possible to lay down and account for the first principles of our constitution more distinctly, than this considerate and unbiassed author does; he first establishes the authority of Almighty God, who enjoins *jure divino* subordination to magistracy; then the actual appointment of the people by his permission; and lastly the efficient sovereignty of the king by virtue of the appointment of the people. He uses the collective word *lex* for the legislative body, which evidently is the representative body of the nation; and he gives his reason, why the king is *sub Deo and sub lege*, because *lex* (that is the legislative body, or the people) *facit regem*. It is clear, that he here speaks of the secondary cause, *lex*, otherwise he must have said, *ipse sub nullo nisi tantum sub Deo, quia DEUS facit regem*. And although in four different places he calls the king *Dei vicarius*, the vicar, or lieutenant, or vicerent of Almighty God; yet he so fully explains the meaning of this term or expression, that the most wilful obstinacy alone

Now the king  
is God's vicar  
upon earth.

alone can misconceive or misrepresent it. "Therefore the king must exercise his legal power, like the vicegerent or minister of God upon earth, for such power only is of God; the power of committing injury is the power of the devil, and not of God; and the king will become the minister either of God or of the devil, according to whosesoever works he shall have done. Therefore whilst he acts justly and by law, he is the vicegerent of the eternal king, but he is the minister of Satan, whilst he declines to injury. For he is called a king (or ruler) from ruling according to law, and not from actually reigning; for he is really a king, whilst he acts according to law, but he becomes a *tyrant* from the moment he oppresses the people committed to him by violent arbitrary power\*." He continues to urge the necessity of the king's governing by law upon the strength of the old reason of his owing his crown to the law.

\* *Bract. cap. 9. f. 107.* "Exercere igitur debet rex potestatem juris, sicut Dei vicarius & minister in terrâ, quia illa potestas solius Dei est; potestas autem injuriæ, diaboli est non Dei, & cujus horum operum fecerit rex, ejus minister erit, cujus opera fecerit. Igitur dum facit justitiam, vicarius est *regis* æterni; minister autem diaboli, dum declinet ad injuriam. Dicitur enim rex a benè regendo, & non a regnando; quia rex est, dum benè regit, tyrannus dum populum sibi creditum violentâ opprimit dominatione."

or rather to the legislative act of the community, *facit enim lex quod ipse fit rex.*

Near two centuries after this, the learned Chancellor Fortescue, adopting the old adage, *Ars non habet inimicum nisi ignorantem*, "The only enemy to an art, is he who knows it not," endeavoured to enlighten his royal pupil by the instructions, which he gave him, and the world in general by the publication of them; amongst them we read the very same constitutional doctrine of the limited prerogative or power, and the legal duties of the king of England. \* "A king of England cannot at his pleasure make any alterations in the laws of the land; for the nature of his government is not only *regal*, but *political*. Had it been merely *regal*, he would have a power to make what innovations and alterations he pleased in the laws of the kingdom, impose *tallages* and other hardships upon the people, whether they would or no without their consent, which sort of government the *civil laws* point out, when they declare, *quod principi placuit, legis habet vigorem*; but it is much otherwise with a king, whose government is *political*, because he can neither make any alteration or

The true limitations of our king's power.

\* Fort. de Laud. Leg. Ang. c. ix.



change in the laws of the realm without the consent of the subject, nor burthen them against their wills with strange *impositions* ; so that a people governed by such laws, as are made by their own consent and approbation, enjoy their properties securely, and without the hazard of being deprived of them, either by the king or any other."

The duties of the crown may be altered by the legislature.

The duties of the king, which in fact make a great part of the rights and liberties of the subject, although at all times limited and ascertained by the constitution, have certainly at different times been altered, as by the whole legislative body they may at any time be, for this plain obvious reason ; to every such alteration, the king is a free assenting party, and therefore he cannot be injured by the imposition of any new duty ; *volenti non fit injuria*. The house of peers and the commons enjoying full freedom of debate and deliberation, it becomes fully competent for them, as the delegates or trustees of the public, to alter or exchange their rights and liberties. I know not how these duties can be more clearly distinguished and ascertained, than by the different coronation oaths, which were at different periods presented to our kings upon their accession to the throne ; for it cannot be denied, that the observance

observance of these oaths on the behalf of the sovereign, becomes the primary constitutional duty of the king, and involves in it the most important constitutional rights and liberties of the subject. Bracton, speaking generally of them, says, \* “ He must at his coronation, by the oath, which he takes in the name of Jesus Christ, promise these three things to his subjects : In the first place, that he will command, and to the utmost of his power procure, that true peace shall be possessed and enjoyed by the church of God, and the whole christian people, during his whole reign. Secondly, that he will forbid and prevent all rapine and other iniquity, in all degrees of men whatever. Thirdly, that in all his judgments he will do justice and mercy, in order that a clement and merciful God may vouchsafe to grant him his mercy, and that through his justice all mankind may

Coronation oaths shew the duties of the king and the rights of the subject.

\* Lib. iii. c. 9. fol. 107. “ Debet enim in coronatione sua, in nomine Ihesu Christi præstito sacramento, hæc tria promittere populo sibi subdito: Imprimis, se esse præcepturum & pro viribus opem impensurum, ut ecclesiæ Dei & omni populo christiano vera pax, omni suo tempore observetur. Secundò, ut rapacitates & omnes iniquitates, omnibus gradibus interdicat: Tertiò, ut in omnibus judiciis æquitatem præcipiat & misericordiam, ut indulgeat ei suam misericordiam clemens & misericors Deus, & ut per justitiam suam firmâ gaudeant pace universi; ad hoc autem creatus est et electus, &c.”

enjoy

What constitutionally meant by the election of the king to the throne.

enjoy lasting peace; for to this end was he created and elected, &c." That is to say, to this end was he in his *natural* capacity formed and made by Almighty God, and in his *political* capacity was he constituted and appointed by the people. For it appears, that Bracton uses the word *elected* here, in the same sense as Mr. Locke and Dr. Price applied it to King William and his present majesty King George the Third; and not in the least to imply, that any form of popular choice or election by vote was required by the constitution to entitle or qualify a person to wear the crown of these realms. I know of no better nor surer ground to form a history of our constitution upon, than the different forms of oaths, which have been tendered to and taken by our sovereigns at different periods and under different circumstances; they will of course bespeak the wishes and claims of the people at the time, as well as the agnition and compact on behalf of the sovereign to satisfy and admit them.

To comment upon these different forms of oaths, would exceed the intended limits of this publication; I shall only therefore consider with judge Blakiston the effect of the present coronation oath, which is required to be taken by the acts of settlement and  
union.

union. \* “ However, in what form soever it be conceived, this is most indisputably a fundamental and original express contract ; though doubtless the duty of protection is impliedly as much incumbent on the sovereign before coronation as after, in the same manner as allegiance to the king becomes the duty of the subject immediately on the descent of the crown, before he has taken the oath of allegiance, or whether he ever takes it at all. This reciprocal duty of the subject will be considered in its proper place ; at present we are only to observe, that in the king’s part of this original contract are expressed all the duties, that a monarch can owe to his people, viz. to govern according to law ; to execute judgment in mercy ; and to maintain the established religion : and, with respect to the latter of these three branches, we may farther remark, that by the act of union, 5 Ann, c. 8. two preceding statutes are recited and confirmed ; the one of the parliament of Scotland, the other of the parliament of *England* ; which enact, the former, that every king at his accession shall take and subscribe an oath to preserve the protestant religion, and presbyterian church government in Scotland ; the

The effect of  
the present co-  
ronation oath.

\* Blak. b. i. c. 6. sub. fin.

latter,

latter, that at his coronation he shall take and subscribe a similar oath to preserve the settlement of the church of England, within England, Ireland, Wales, and Berwick, and the territories thereunto belonging.

The king's obligation to preserve the civil establishment of religion.

From the nature and purport of our present coronation oath, it must naturally occur to every one, that reflects upon what I have before said of the king's headship or supremacy over the civil establishment of the church of England, that he is equally bound to preserve the civil establishment of the presbyterian church in Scotland, as of the protestant church in England; though in principle and doctrine the two religions are widely different from each other. It was not only competent for, but incumbent upon King James the Second, as a Roman catholic, King William the Third, as a presbyterian, King George the First, as a Lutheran, and his present majesty, as a real church of England man, to comply with this coronation oath, by preserving the rights and privileges of these respective churches; for the civil establishments of them were settled by positive laws, which the king is bound to obey and execute by virtue of his office and trust.

Before I quit this subject, it may not be improper to quote the answer of Sir John Fortescue

Fortescue to his royal pupil's question ;  
 " Why some kings of England were not  
 pleased with the laws of England, but were  
 industriousto introduce the civil law as a part  
 of the constitution, to the prejudice of the  
 common law ?"

\* " You would cease to wonder, my  
*prince*, if you would please seriously to con-  
 sider the nature and occasion of the attempt.  
 I have already given you to understand, that  
 there is a very noted sentence, a favourite  
 maxim or rule in the *civil law*, *that which*  
*pleases the prince has the effect of a law*. The  
 laws of *England* admit of no such maxim, or  
 any thing like it. A king of *England* does  
 not bear such a sway over his subjects, as a  
 king *merely*, but in a *mixt political capacity* ;  
 he is obliged by his coronation oath to the  
 observance of the laws, which some of our  
 kings have not been able to digest, because  
 thereby they are deprived of that free exer-  
 cise of dominion over their subjects in that  
 full extensive manner, as *those kings* have, *who*  
*preside and govern by an absolute regal power* ;  
 who in pursuance of the laws of their respec-  
 tive kingdoms, in particular, *the civil law*,  
 and of the aforesaid *maxim*, govern their sub-

Why some of  
 our former  
 kings wished to  
 be absolute.

\* Fort. de Laud. Leg. Ang. c. xxxiv.

jects,

jects, change laws, enact new ones, inflict punishments, and impose taxes, at their mere will and pleasure, and determine suits at law in such manner, when, and as they think fit; for which reason *your ancestors* endeavoured to shake off this *political* frame of government; in order to exercise the same *absolute regal dominion* too over their subjects, or rather to be at their full swing to act as they list."

It was well observed by the late judge Blakiston, who was neither a violent whig nor a republican writer, \* "that one of the principal bulwarks of civil liberty, or in other words of the British constitution, was the limitation of the king's prerogative by bounds so certain and notorious, that it is impossible he should ever exceed them without the consent of the people on the one hand, or on the other, without a violation of that original contract, which in all states impliedly, and in ours expressly, subsists between the prince and the subject." He further asserts in a very manly manner the right, which in my circumstances I call a *duty*, to investigate and discuss the prerogatives of the crown.

Right and duty  
to discuss the  
prerogative  
royal.

"*There* cannot be a stronger proof of that genuine freedom, which is the boast of this

\* Blak. Com. b. i. c. 7.

age and country, than the power of discussing and examining with decency and respect the limits of the king's prerogative, a topic, that in some former ages was thought too delicate and sacred to be profaned by the pen of a subject; it was ranked among the *arcana imperii*, and like the mysteries of the *bona dea*, was not suffered to be pried into by any, but such as were initiated in its service; because perhaps the exertions of the one, like the solemnities of the other, would not bear the inspection of a rational and sober enquiry.

The glorious Queen Elizabeth herself made no scruple to direct her parliaments to abstain from discoursing on matters of state; and it was the constant language of this favourite princess and her ministers, that even that august assembly ought not to deal, to judge, or to meddle with her majesty's prerogative royal; and her successor King James the First, who had imbibed high notions of the divinity of regal sway, more than once laid it down in his speeches, that as it is atheism and blasphemy in a creature to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what a king may do in the height of his power: good christians, he adds, will be content with God's will revealed in his word; and good

The free discussion of the prerogative discouraged by several of our monarchs.



subjects will rest in the king's will revealed in his law."

Prerogatives effectually vested in the crown.

The constitution has annexed these powers and prerogatives to the king, as to the executive power or first branch of the legislature, for the establishment, maintenance, and preservation of its own dignity, energy, and vigor; and when it intrusted the king with them, it vested them in him so effectually, that it became almost impossible for any power upon earth to divest them out of him. Therefore do we see no change nor alteration made in the royal prerogative, in which the king was not freely consenting, or where he had not voluntarily given up or abandoned his right of consent. Yet great and apparently unlimited, or uncontrollable, as these prerogatives may appear at first sight, the wisdom of our admirable constitution has fully secured the subjects of England against any possible invasion of their rights by the crown, either by private injury or public oppression.

Subjects redress against the crown in private injuries.

\* "And first, as to private injuries; if any person has, in point of property, a just demand upon the king, he must petition him in his court of chancery, where his chan-

\* Black. Com. b. 1. c. 7.

cellor will administer him right, as a matter of grace, though not upon compulsion." In such cases, the subject obtains his remedy by the process of *monstrans de droit*, or by *petition of right*; \* "in either of which the same justice is done to him, as in any other legal or equitable process whatsoever."

† "Next, as to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law hath also assigned a remedy. For, as a king cannot misuse his power, without the advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished. The constitution has therefore provided, by means of indictments and parliamentary impeachments, that no man shall dare to assist the crown in contradiction to the laws of the land. But it is at the same time a maxim in those laws, that the king himself can do no wrong, since it would be a great weakness and absurdity in any system of positive law, to define any possible wrong, without any possible redress."

Security of the  
nation against  
public wrongs.

‡ "For as to such public oppressions, as tend to dissolve the constitution, and subvert

\* 4 Co. Rep. 54.

† Black. ubi. supra.

‡ Black. Com. b. i. c. 7.

There can be  
no controul  
over sovereign  
power.

the fundamentals of government, they are cases, which the law will not out of decency suppose; being incapable of distrusting those, whom it has invested with any part of the supreme power; since such distrust would render the exercise of that power precarious and impracticable. For, wherever the law expresses its distrust of abuse of power, it always vests a superior coercive authority in some other hand to correct it; the very notion of which destroys the idea of sovereignty. If therefore for example, the two houses of parliament, or either of them, had avowedly a right to animadvert on the king, or each other, or if the king had a right to animadvert on either of the houses, that branch of the legislature so subject to animadversion would instantly cease to be part of the supreme power; the balance of the constitution would be overturned, and that branch or branches, in which this jurisdiction resided, would be completely sovereign. The supposition of *law* therefore is, that neither the king nor either house of parliament (collectively taken) is capable of doing any wrong; since in such cases the law feels itself incapable of furnishing any adequate remedy; for which reason all oppression, which may happen to spring from any branch of the sovereign

reign power, must necessarily be out of the reach of any *stated rule* or *express legal* provision ; but if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies."

Mr. Yorke, in his treatise upon the law of forfeiture, has in a very compendious and clear method enumerated most of the *attributes*, which the constitution annexes to the political capacity of the king. \* " The king is considered in law in two different capacities, the *political* and the *natural*. In his *politic* capacity he never dies, nor is subject to infancy ; is under the happy *inability* of doing wrong, because acting by his officers, and limited by law ; combines characters and powers of such a kind, as to make him one of the three estates in the constitution ; and forms that estate, which gives life and motion to the rest. He represents the kingdom in transacting with foreign countries for the purposes of peace or war. He has a controul in the making of laws, and when made, without his administration of them, they are a dead letter. *He is the fountain of honour, justice, and mercy.* The executive

Prerogatives of the king in his political capacity.

\* Considerations on the Law of Forfeiture, p. 113, 114.

power of the government is lodged intirely in his hands; and for this reason offences are referred to him, as being in contempt of that power, and to be punished by it. Treasons, which concern the representation of his authority, or the instruments, that convey it to the people, as his *seals*, his *coin*, and certain great magistrates in the execution of their office, relate to the allegiance, which the subject owes him in this view. In like manner treasons, which concern the safety of the kingdom, in respect of foreign *invasion*, or open *rebellion*, or secret *conspiracy*; in a word, all crimes of a public nature, and even injuries to private persons, are supposed to be against his peace, dignity, and crown; so that, what in other free countries are called laws relative to public crimes, or crimes against the state, pass in England under the general denomination of *placita coronæ*, or crown law.\* And he further very emphatically puts these questions: "Has the law provided no remedy in respect of the king? And is the *political* capacity thus to furnish an exemption to him in his *natural*, from being called to account? *The law will make no answer, but history will give one.*"

\* Considerations on the Law of Forfeiture, p. 121.

He then enters into a detail of the revolution of 1688, which, as I have already said so much upon that subject, I shall not repeat.

We never can sufficiently admire the delicate though powerful checks, with which the constitution has enabled the other branches of the legislature to moderate and curb the powers of the crown, which to a partial observer appear little short of the prerogatives claimed by the most absolute monarchs. \* “The king of England therefore has the prerogative of commanding armies, and equipping fleets, but without the concurrence of his parliament he cannot maintain them. He can bestow places and employments, but without his parliament he cannot pay the salaries attendant on them. He can declare war, but without his parliament it is impossible for him to carry it on. In a word, the royal prerogative, destitute as it is of the power of imposing taxes, is like a vast body, which cannot of itself accomplish its motions; or if you please, it is like a ship completely equipped, but from which parliament can at pleasure draw off

Constitutional  
checks upon  
the prerogative.

\* De Lolme's Constitution of England, b. i. c. vi.

## *Of the Prerogatives of the Crown.*

the water, and leave it aground, and also set it afloat again by granting subsidies."

The cautious moderation with which the rights of the different constituent parts of our legislature are exercised.

The withholding or refusal of the necessary supplies would be a measure of such extreme violence, that would in effect produce a dissolution of the government; but such a natural and powerful bias has each constituent part of our constitution for preserving its respective equilibrium in the state, that the largest and most powerful prerogatives are ever exercised with the most cautious moderation and prudence. Thus has parliament \* "in this respect imposed laws upon themselves, and without touching the prerogative itself they have moderated the exercise of it. A custom has for a long time prevailed, at the beginning of every reign, and in the kind of overflowing of affection, which takes place between a king and his first parliament, to grant the king a revenue for his life; a provision, which with respect to the great exertions of his power, does not abridge the influence of the commons, but yet puts him in a condition to support the dignity of the crown, and affords him, who is the first magistrate of the nation, that independence, which the laws ensure also to those magi-

Civil list granted to the king for life.

\* De Lolme's Constitution of England, b. i. c. vii.

strates,

strates, who are particularly entrusted with the administration of justice.

“ This conduct of the parliament provides an admirable remedy for the accidental disorders of the state. For though by the wise distribution of the powers of government great usurpations are become in a manner impracticable, nevertheless it is impossible, but that in consequence of the continual, though silent efforts of the executive power to extend itself, abuses will at length slide in. But here the powers wisely kept in reserve by the parliament, afford the means of remedying them. At the end of each reign the civil list, and consequently that kind of independence, which it procured, are at an end.

The successor finds a throne, a sceptre, and a crown; but he finds neither power, nor even dignity; and before a real possession of all these things is given him, the parliament have it in their power to take a thorough review of the state, as well as correct the several abuses, that may have crept in during the preceding reign; and thus the constitution may be brought back to its first principles.”

*An opportunity at the beginning of each reign to review the state, &c.*

Some of the rights, liberties, and privileges of the lords and commons, which in fact greatly moderate and controul the prerogative,



tive, power, and influence of the crown, will be more properly noticed, when I come to treat of those two branches of the legislature separately.

Remedies  
against the  
crimes of minis-  
ters.

Although the constitution has placed the sacred person of the sovereign in so secure and exalted a station, as not to be in any manner liable to any vindictive, penal, or even mortifying and humiliating process, upon the political principle of his *inability* to do wrong; yet it has not left the community without its remedy in every case, in which it might be injured. Such crimes or offences, either of ministers or others, as amount to high treason, I shall consider hereafter.

\* “But as to offences of a lower kind, such as the evil advice of ministers influencing the king, not indeed to exceed the limits of his power, but to abuse the discretion, with which his people have intrusted him, the proceeding by impeachment of the commons for high crimes and misdemeanors is a *complete* remedy, and according to the degree and height of the offences the judgment may be proportioned in parliament.” Nay the constitution is so respectfully tender of the person, character, and reputation of the sove-

\* Considerations on the Law of Forfeiture, p. 117.

reign, that it makes his ministers responsible for every circumstance, that can operate to the prejudice or injury of any of them.

\* “ Measures of the greater severity may indeed in some circumstances be necessary ; but the minister, who advises, should take the execution and odium of them entirely upon himself. He not only betrays his master, but violates the spirit of the English constitution, when he exposes the chief magistrate to the personal hatred or contempt of his subjects. And the reputation of public measures depends upon the minister, who is responsible, not upon the king, whose private opinions are not supposed to have any weight against the advice of his council, whose personal authority should therefore never be interposed in public affairs. This, I believe, is true constitutional doctrine.”

The king's personal authority not to be interposed in public affairs.

It ever is a point of peculiar delicacy and tenderness, to speak of extreme cases, which, though without all human probability, are still within the actual possibility of human occurrences. “ It is,” says Mr. Yorke, † “ scarce consistent with that modesty, which the professors of the law observe in putting

Indelicacy in putting extreme cases.

\* Junius, Letter xxxv. 3d April, 1770.

† Considerations on the Law of Forfeiture, p. 115.

cases relative to statutes of this kind, to propose any other than those, which have *existed* in fact, or fall *clearly* within the letter of them." In order to give my readers the more complete satisfaction upon this subject, I shall again recur to the respectable authority of this learned and constitutional author.

Cases tending  
to a dissolution  
of government.

\* "Now if any one think, in case the king should unhappily and obstinately interest his person, in supporting the actions of his ministers against the clear and established laws of the land, that the principles of a constitution so limited and controuled in all the parts of it seem to warrant the providing of a judicial remedy against him, as against another magistrate or minister of state, the answer to this chimæra is plain; that every constitution of government has its peculiar cases tending to dissolution, beyond the power of any *stated* remedy, even though it be the mixt form of government, which both avoids those, to which other forms are subject, and is less frequently in danger from such convulsions, as are proper to itself. The English government therefore notwithstanding its du-

\* Considerations on the Law of Forfeiture, p. 118, & seq.

erable nature, and *singular advantages*, partaking in so large a degree of monarchy, the case here proposed would be a case tending to dissolution, not to be subjected to the ordinary provisions of law. The reigns of Charles I. and James II. are evidence of this; and it arises from the nature of the thing; because the king of England (unlike the kings of Sparta or Arragon, with their Ephori and El Giusticia, officers appointed to inspect and judge their actions) is not only a magistrate or general, but composes an *essential* part of the supreme power; so that, on the one hand, should a future king attempt to subject the crown and people to a foreign yoke, or to set up a general dispensing power by proclamation, to controul the operation of all the laws, these would be cases manifestly tending to dissolution. Or should he summon the lords to assist him in making laws, without the representative body of the commons, and the lords instead of mediating, should support him in the arbitrary design of excluding the commons from a share in the legislature, it would be a case tending to dissolution; and though the law will *not* suppose the possibility of the wrong, since it cannot mark out or assist the remedy, yet every member of that representative body might exclaim in  
the

the words of Crassus the Roman orator when he opposed the encroachments of a tyrannical consul on the authority of the senate, ‘ *Ille non consul est, cui ipse senator non sum* ;’ He is no king, to whom we are not an house of parliament. . On the other hand, should the representative of the commons, like that of Denmark, surrender the rights and liberties of the people into the hands of the king, and the king, instead of dissolving the parliament, should accept the surrender, and attempt to maintain it, contrary to the laws, and to the oath of the crown ; or should the two houses take the power of the militia, the nomination of privy counsellors, and the negative in passing laws out of the crown, these would be cases tending to dissolution ; that is, they are cases which the law will not put, being incapable of distrusting those, whom it has invested with the supreme power, or its own perpetual duration, and *they are out of the reach of laws*, and stated remedies, because they render the exercise of them precarious and impracticable. This observation may be applied to every similar case, which can be found in imagination, relative to the several estates, with this difference, that it holds strongest *as to the king*, in whom both the common and statute law have reposed the whole

whole executive power; nor could the least branch of it be lodged in the two houses, for the purpose of providing a judicial remedy against him, unless the constitution had erected *imperium in imperio*, and were inconsistent and destructive of itself."

As circumstances have from time to time arisen in the state, so have different modifications been made in the royal prerogative, to meet the difficulty, or prevent the mischief in future, which the legislative prescience had not expressly guarded against before. Thus, as the king was by the constitution indisputably intitled to the exclusive and discretionary right of convening and assembling the parliament, we find at last in the 16th year of King Charles II. A. D. 1664, the legislative body fixing the time of their being convened or summoned. I shall not undertake to investigate or set forth the reasons, why this frequency was at this time fixed upon or determined; but I shall merely observe, that the act \*, after reciting that, "whereas the act made in the parliament begun at *Westminster* the third day of *November*, in the sixteenth year of the reign of our late sovereign lord King *Charles* of blessed memory, intituled,

The original constitutional right in the king to convene parliaments at his discretion,

altered into an obligation of convening them once in three years.

\* 16 Car. II. c. 1. An Act for the assembling and holding of parliament once in three years at least.

*An*

*An Act for the preventing of Inconveniencies hap-  
pening by the long Intermission of Parliaments,* is  
in derogation of his majesty's just rights and  
prerogative inherent to the imperial crown of  
this realm, for the calling and assembling of  
parliaments, and may be an occasion of mani-  
fold mischiefs and inconveniencies, and much  
endanger the peace and safety of his majesty,  
and all his liege people of this realm, repeals  
such act, and enacts as follows :

“ And because by the ancient laws and  
statutes of this realm, made in the reign of  
King *Edward* the Third, parliaments are to  
be held very often, your majesty's humble and  
loyal subjects the lords spiritual and temporal,  
and the commons, in this present parliament  
assembled, most humbly do beseech your most  
excellent majesty, that it may be declared and  
enacted, and be it declared and enacted by the  
authority afore said, that hereafter the fitting  
and holding of parliaments shall not be inter-  
mitted or discontinued above three years at the  
most; but that within three years from and af-  
ter the determination of this present parlia-  
ment, and so from time to time within three  
years after the determination of any other par-  
liament or parliaments, or if there be occasion  
more often, your majesty, your heirs and suc-  
cessors, do issue out your writs for calling, as-  
sembling

sembling, and holding of another parliament, to the end there may be a frequent calling, assembling, and holding of parliaments once in three years at the least."

\* " Moreover, as the most fatal consequences might ensue, if laws, which might most materially affect public liberty, could be enacted in parliaments abruptly and imperfectly summoned, it has been established, that the writs for assembling a parliament must be issued forty days at least before the meeting. Upon the same principle it has also been enacted, that the king cannot abridge the terms he has once fixed for a prorogation, except in the two following cases; viz. of a rebellion, or of imminent danger of a foreign invasion; in both which cases a fourteen days notice must be given †."

Writs to be issued forty days before the meeting of parliament.

Although the king by his royal prerogative be the supreme head of the civil establishment of the church, he cannot alter the established religion, nor is he now permitted to hold the crown, if he profess the Roman catholic religion, as I have before observed. I mention this again, to enforce the more sensibly the right of the legislature to alter the constitution; and that this altera-

Alterations in the constitution.

• De Lolme, c. viii.

† 30 Geo. II. c. 25.



tion has been made since the revolution, is proved by the actual possession of the throne by king James II. before that event; the reasons of it were fully canvassed and submitted to even in those times of animosity and heat. \* “ But when these prerogatives are asserted to a prince, who is of a contrary religion to that established by law, there would be always danger of their being abused to the prejudice or destruction of the established religion; to which it cannot be forgotten, that the promoters of the bill of exclusion used the same argument; if you leave him king, say they, he will have all the prerogatives of a king, and those prerogatives may be made instrumental to the ruin of your religion; which could not be denied by the gentlemen on the other side, who opposed that bill. Their only reply was, *fiat justitia, ruat cælum*; it is his right, and we must not do evil, that good may come; we must not do wrong, no, not to promote the interest of religion itself.” Nothing but an alteration in the constitution could prevent the possibility of the like event happening again.

.. Lord Chief Justice Herbert's Reasons for the Judgment in the Case of Sir Edward Hales, p. 32.

“ With

\* “ With regard to foreign concerns, the king is the delegate or representative of his people. It is impossible, that the individuals of a state in their collective capacity can transact the affairs of that state with another community equally numerous as themselves. Unanimity must be wanting to their measures, and strength to the execution of their counsels: In the king therefore, as in a center, all the rays of his people are united, and form by that union a consistency, splendor, and power, that make him feared and respected by foreign potentates, who would scruple to enter into any engagement, that must afterwards be revised and ratified by a popular assembly. What is done by the royal authority with regard to foreign powers, is the act of the whole nation ; what is done without the king’s concurrence, is the act only of private men.”

King complete representative of the nation in foreign treaties.

† “ The king has the military power ; but still with respect to this, he is not absolute. It is true, in regard to the sea-forces, as there is in them this very great advantage, that they cannot be turned against the liberty of the nation, at the same time that they are the surest bulwark of the island, the

King can keep up what sea-forces he pleases.

• Black. Com. b. i. c. vii.

† De Lolme, c. viii.

But cannot raise  
land forces  
without the  
consent of par-  
liament.

king may keep them as he thinks proper ; and in this respect he lies only under the general restraint of applying to parliament for obtaining the means of doing it. But in regard to land forces, as they may become an immediate weapon in the hands of power, for throwing down all the barriers of public liberty, the king cannot raise them without the consent of parliament. The guards of Charles II. were declared anti-constitutional ; and James's army was one of the causes of his being at length dethroned.

The nature of  
our present  
standing army.

“ In these times, however, when it is become a custom with princes to keep those numerous armies, which serve as a pretext and means of oppressing the people, a state, that would maintain its independence is obliged in great measure to do the same. The parliament has therefore thought proper to establish a standing body of troops, which amounts to about thirty thousand men, of which the king has the command.

“ But this army is only established for one year ; at the end of that term it is (unless re-established) to be *ipso facto* disbanded ; and as the question, which then lies before parliament is not whether the army *shall be dissolved*, but whether it *shall be established anew*, as if it had never existed, any one of  
the

the three branches of the legislature may, by its dissent, hinder its continuance.

“ Besides, the funds for the payment of this body of troops are to be raised by taxes, that never are established for more than one year; and it becomes likewise necessary, at the end of this term again to establish them.”

The pay of the army is always raised by annual taxes.

“ Against any abuses of the king’s prerogative in commencing, carrying on, or concluding wars, or in making treaties, leagues, or alliances with foreign states, is the constitutional security of parliamentary impeachments of the ministers, who shall have advised or induced the crown to an imprudent, detrimental, or injurious exertion of the prerogative.

Impeachment of ministers the remedy against the declaration of imprudent wars.

\* “ Another capacity, in which the king is considered in domestic affairs, is as the fountain of justice, and general conservator of the peace of the kingdom. By the fountain of justice the law does not mean the *author* or *original*, but only the *distributor*. Justice is not derived from the king, as from his *free gift*; but he is the steward of the public, to dispense it to whom it is *due*. He is not the spring, but the reservoir, from whence

King is the distributor or dispenser of justice.

\* Black. Com. b. i. c. 7.

right and equity are conducted, by a thousand channels, to every individual. And hence it is, that all jurisdictions of courts are either mediately or immediately derived from the crown, their proceedings run generally in the king's name, they pass under his seal, and are executed by his officers.

“ It is probable, and almost certain, that in very early times, before our constitution arrived at its full perfection, our kings in person often heard and determined causes between party and party ; but at present, by the long and uniform usage of many ages, our kings have delegated their whole judicial power to the judges of their several courts, which are the grand depository of the fundamental laws of the kingdom, and have gained a known and stated jurisdiction, regulated by certain and established rules, which the crown itself cannot now alter but by act of parliament. And, in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute 13 W. III. c. 2. that their commissions shall be made (not as formerly, *durante bene placito*, but) *quamdiu bene se gesserint*, and their salaries ascertained and established ; but that it may be lawful to remove them on the address of both houses  
of

Independence  
of the judges.

of parliament. And now, by the noble improvements of that law, in the statute of 1 Geo. III. c. 23. enacted at the earnest recommendation of the king himself from the throne, the judges are continued in their offices during their good behaviour, notwithstanding any demise of the crown (which was formerly held immediately to vacate their seats) and their full salaries are absolutely secured to them during the continuance of their commission; his majesty having been pleased to declare, that he looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice, as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honour of the crown."

## CHAP. XII.

## OF THE DISPENSING POWER IN THE CROWN.

SINCE the passing of the first of William and Mary I will not suppose, that any one individual in the nation can look upon the *dispensing power* to be a legal or constitutional prerogative in the crown, or that it can on any occasion be exercised by the king independently of parliament. But as this was one of the great grievances complained of at the revolution, and was generally looked upon by the nation as an usurpation of the crown, and a direct incroachment upon the liberties of the people, I shall beg leave to make some observations upon it. It appears to me as clear, that the *dispensing power*, as it was exercised down to the time of the revolution, was a part of the ancient royal prerogative, as it is unquestionable, that it was in its nature a power capable of the grossest abuse, and consequently highly improper and even dangerous to be trusted in the hands of the sovereign. As it is now more than a century, since by this explicit and judicious act of parliament the

Dispensing power dangerous to be trusted in the hands of the crown.

the dispensing power has been declared unconstitutional, an opinion upon the old legal question may be now hazarded without a shadow of displeasure or offence. I shall do it by way of illustration of the principle, *that the sovereignty of power continues for ever unalienably to reside with the people*; and to this principle I attribute the glory and preservation of the English constitution.

Of this question I say what lords Ellesmere and Bacon said formerly of another, that it is not a question *de bono*, but *de vero*: I think it as true, that the right did exist, as I think it improper that it should have existed. The account of the authorities in law, upon which judgment was given in Sir Edward Hale's case, written by Sir Edward Herbert, chief justice of the common pleas in vindication of himself I cannot help commending as one of the most upright, solid, and convincing arguments I ever remember to have read, as far as it goes to prove the existence of the right from its ancient and continued usage and practice. But like all other Tories, he deduced this prerogative of the crown, like the whole regal dignity and power itself, from the wrong source. He clearly shews the usage and exertion of this prerogative to have been noticed and acknowledged



It appears from the usage of the term *non obstante*, that the dispensing power was actually exercised.

The difference between dispensing with *mala prohibita* and *mala in se*, absurd.

known by parliament and the courts of law for some centuries. It would only then have existed by the sufferance, acquiescence, or recognition of the community; and that it did so, the very usage of the term of *non obstante* is a convincing proof.

I do not mean to enter into nor repeat any of Sir Edward Herbert's arguments. The difference, which is admitted by all parties, between the right of dispensing from statutes, which enjoin *mala in se* and *mala prohibita*, is to my mind sufficiently convincing, that the people of this nation did heretofore acknowledge or admit of a right in their sovereign to dispense in certain cases with the obligations of acts of parliament. For as to *mala in se*, it was no more in the power of the parliament, than of the king, to permit or allow of any dispensation or suspension from them, as is evident; that is, no human power whatever could render *malum in se*, licit or lawful, much less legal or constitutional; and as to the *malum prohibitum*, we are speaking of what is prohibited by the legislative authority: now it is evident, that the executive power, as a part of the legislature, can of itself have no absolute power, nor controul, nor jurisdiction over the whole legislature, for then the part would be greater than

than the whole ; but if it could of itself suspend or dispense with the obligation or coercive effect of the acts of the whole legislature, it would have such power, controul, or jurisdiction over it. The subject matter of the legislative act is perfectly irrelevant to the power of suspending it ; the power, which forbids the killing of a partridge before the first day of September, is the same, and as binding and as uncontrollable and indispensable, as that, which condemns the traitor to be hanged, drawn, and quartered : nothing but the consent of the community could vest a right in the king to dispense with either of them ; and from every sort of authority, that can be produced, it appears evident beyond question, that this right was formerly permitted and acknowledged in the crown.

The subject matter of the act irrelevant to the power of dispensing from it.

The possible abuse of this prerogative by the sovereign, is no more an argument against the subsistence of the prerogative itself, than against other undoubted rights and prerogatives still vested in the crown. If the king were to pardon every criminal, that is condemned, or create an army of peers, such anarchy and confusion would follow the imprudent exertion of his prerogative, that the preservation of the state would require an immediate check, or an alteration in this part

The imprudent exercise of a prerogative, no proof against the subsistence of it.

part of the constitution ; but the possibility of abusing a prerogative does not certainly do away the sovereign's right to it. In all such kinds of prerogative, the discretionary and prudential power of exertion is not the least part of the prerogative itself.

Upon the whole, since this very great and enormous power or prerogative is now for the benefit and happiness of the nation rendered illegal and unconstitutional, I shall expect, since all party motives and reasons are now at an end, that some few observations will be candidly attended to by an unbiassed, because now a disinterested public ; and I frankly profess, that I shall presume upon most of my readers thinking with me, that their ancestors, in 1688, were as commendable for insisting upon the annihilation of the right, as their progenitors had been blameable for having acquiesced in or submitted unto it so long.

Acquiescence  
of the commu-  
nity to the pre-  
rogative gives  
a right to the  
crown.

It appears, that the free acquiescence of the community in the actual exercise of this prerogative in the crown, is a convincing proof of the right of the sovereign to the prerogative itself ; (for almost the whole prerogative of the crown originated from, and became established by the tacit consent of the people).

In the days of King Henry VIII. the parliament passed an express act, by which they actually vested in the king a much more dangerous and extensive prerogative or power, than the dispensing power; which, although all writers have unexceptionably condemned and reprobated, yet I never have as yet met with one, who doubted of its legal validity, whilst the act was in force. This prerogative or right of dispensing in certain cases with the obligations of acts of parliament, having, like most other prerogatives, originated from the tacit assent of the community, and having been through a long series of years recognized by acts of parliament, discussed and confirmed by courts of law, frequently exercised by the king, and always submitted to by the people, can be less effectually argued against *a priori*, than the act of 31 Hen. VIII. c. 8. of which Sir Robert Atkins, a very constitutional writer, and an old whig, speaks in this manner: \* “ Now from this supposed and imaginary defect of law, or some particular mischief or hardship sometimes (though very rarely) happening to some men, which hardship was not foreseen by the makers of the law (although this is

The dispensing power recognized by parliament.

\* Atkins's Enquiry into the Power of dispensing with Penal Statutes, p. 199. & seq.

oftener

oftener pretended and feigned than happening in truth (occasion has been taken to assert a power in the prince or chief ruler to dispense with the law in extraordinary cases, and to give ease or relaxation to the person, that was too hard bound or tied to a law; for, as I observed before; the law is of a binding and restraining nature and quality; it hath the same specious pretence as a law made 31 H. VIII. c. 8. had; which was of most desperate and dangerous consequence; had it not speedily been repealed by the statute of 1 E. VI. c. 12.

Act that proclamations by the king should have the force of acts of parliament.

“ The title of that mischievous act of 31 H. VIII. is this; *An Act that Proclamations made by the King's Highness, with the Advice of the Honourable Council* (meant of the privy counsel) *shall be obeyed and kept as though they were made by Act of Parliament.*

“ The preamble recites, the king, by advice of his council, had thentofore set forth fundry proclamations concerning articles of religion, and for an unity and concord to be had among his subjects, which nevertheless many froward, wilful, and obstinate persons have wilfully contemned and broken, not considering what a king by his royal power may do; and for lack of a direct statute and law to coerce offenders to obey these proclamations.

clamations, which being still suffered, should encourage offenders to the disobedience of the laws of God, and found too much to the great dishonour of the king's most royal majesty (who may full ill bear it).

“ Considering also, that sudden occasions fortune many times, which do require speedy remedies, and by abiding for a parliament, in the mean time might happen great prejudice to ensue to the realm; and weighing that his majesty (which by the regal power given by God, may do many things in such cases) should not be driven to extend the supremacy of his regal power, by wilfulness or froward subjects; it is therefore thought necessary, that the king's highness of this realm for the time being, with the advice of his council, should make proclamations for the good order and government of this realm of *England*, *Wales*, and other his dominions, from time to time, for the defence of his regal dignity, as the cases of necessity shall require.

“ Therefore it is enacted, that always the king for the time being, with the advice of his council, whose names thereafter follow, (and all the great officers of state are mentioned by the titles of their offices), for the time being, or the greater number of them, may set forth at all times, by authority of this act,

act, his proclamations, under such penalties, and of such sort as to his highness and his council, or the more part of them shall seem requisite; and that the same shall be obeyed, as though they were made by act of parliament, unless the king's highness dispense with them under his great seal.

“ Here, at one blow, is the whole legislative power put into the king's hands, and there was like to be no further use of parliaments, had this continued.

“ Then there follows a clause, that would seem to qualify and moderate this excess of power; but it is altogether repugnant and contradictory in itself.

“ And the conviction for any offence against any proclamation is directed, not to be by a jury, but by confession, or lawful witnesses or proofs.

“ And if any offender against any such proclamation, after the offence committed, to avoid the penalty, wilfully depart the realm, he is adjudged a traitor.

“ And the justices of peace are to put these proclamations into execution in every county. And by another act of 34 and 35 Hen. VIII. c. 23. nine of the great officers are made a *quorum*, &c. for they could not get half the number to act under it.

“ The

“ The act of 1 E. VI. c. 12. (which repeals the terrible law) begins with a mild and merciful preamble, and mentions that act of King H. VIII. which as this act of E. VI. does prudently observe, might seem to men of foreign realms, and to many of the king’s subjects, very strict, fore, extreme, and terrible ; this act of King E. VI. does therefore, by express mention of that terrible act, wholly repeal it. And so that law (to use the Lord Bacon’s phrase) was honourably laid in its grave ; and God grant it may never rise again.

Repealed by  
K. Ed. VI.

The ingenuity of man cannot invent a reason or an argument against the propriety and policy of the dispensing power, which does not apply with redoubled force against this act of Henry VIII. ; but no reason could prevent the operation of the statute, whilst it remained in force ; and no reason could destroy the royal prerogative or power of dispensing with the obligations of certain statutes by a *non obstante*, till the legislature declared it illegal. I admit of the force, energy, and conclusion of all the reasons and arguments against the one and against the other, not to prove their inefficacy or non-existence, but to establish the necessity of the repeal or annihilation of them both. I can-

Stronger arguments against this act of H. VIII. than against the dispensing power.



not help observing, that all the authorities for the dispensing prerogative are express, open, and unambiguous; and that all the arguments (for express authorities I find none,) against it are *a priori*, or *ab incongruo*.

The arguments  
in favour of this  
prerogative.

So violently were the two opposite opinions upon this point formerly agitated, that neither argument nor authority seemed to make the smallest impression upon the adversary. Those, who maintained the prerogative, argued, that statutes, which provide for particular cases, notwithstanding any patent made to the contrary, with clause of *non obstante*, or notwithstanding any clause of *non obstante* to the contrary &c. \* evidently presuppose the existence, validity, and legality of such *non obstante* dispensations. They quoted cases in point from the year books, and the explanations and applications of them, by the greatest lawyers of all subsequent times, who are unequivocally clear and decisive in their opinions upon the legality of such dispensations. Thus lord chief justice Herbert for this purpose first quotes Fitzherbert, † “who lived near this time, and could not easily be mistaken in the sense of the year

Authorities of  
the greatest  
lawyers in fa-  
vour of this  
prerogative.

\* Such Acts were, 4 Hen. IV. c. 31. Hen. VI. c. 23. &c.

† Herbert, ubi supra, p. 12, 13, 20.

books. Next to him shall be Plowden, who, as all lawyers will confess, is as little likely to be mistaken in the sense of the year books, as any reporter we have. Next is my lord Coke." And when he quotes the words of my lord Vaughan, he says, "Whom I cite the oftener, because every body remembers him, and it is very well known he was never guilty of straining the king's prerogative too high." I wish not to charge and clog my reader's attention with a dry tedious discussion of a point of obsolete law; but shall refer their final judgment and determination, whether a dispensing prerogative or power did or did not exist in the crown before the revolution, to the following parliamentary declarations, made upon very different occasions, at the distance of above two hundred years from each other.

In the year 1413, 1 Henry V. \* "The commons pray, that the statutes for voiding of aliens out of the kingdom may be kept and executed; to which the king agreeth, saving his prerogative, that he *may dispense with whom he pleases*; and upon this the commons answered, that their intent was *no other, nor never shall be* by the grace of God."

Proved from  
act 1 Hen. V.

In the year 1628, 3 Car I. in a debate between the two houses of parliament upon the petition of right, Serjeant Glanville was deputed in a committee of both houses of parliament in the painted chamber, to deliver the sense of the house of commons, in which speech, he says, \* “ I most humbly beseech your lordships to weigh the reasons, which I shall present, not as the sense of myself, the weakest member of our house, but as the genuine and true sense of the whole house of commons, conceived in a business debated there with the greatest gravity and solemnity, with the greatest concurrence of opinions and unanimity, that ever was in any business maturely agitated in that house.” And then coming to speak of the point in question, he delivered the sense of the commons in these words: “ There is a trust inseparably reposed in the persons of the kings of England, but that trust is regulated by law; for example, when statutes are made to prohibit things not *mala in se*, but only *mala quia prohibita*, under certain forfeitures and penalties to accrue to the king, and to the informers, that shall sue for the breach of them; the commons must, and ever will ac-

This prerogative acknowledged by the house of commons to Ch. I.

\* Rushworth's Collections, Part i. p. 571.

knowledge a regal and sovereign prerogative in the king touching such statutes; that it is in his majesty's absolute and undoubted power to grant dispensations to particular persons, with the clauses of *non obstante*, to do as they might have done before those statutes, wherein his majesty conferring grace and favour upon some, doth no wrong to others."

As it was the prevailing fashion at the time of the revolution, not to allow that the dispensing power ever had been a prerogative of the crown, therefore have I before said, in compliance with that fashion, and in conformity with the stile of the bill of rights, that the only alterations introduced into the constitution at that time, were in the succession and tenure of the crown. But I must now beg leave to observe, that I reckon this abridgment of the prerogative royal, as a third alteration. Tho' as to the main effect, it is perfectly immaterial, since the power can now be no more exercised by the king, whether he be prevented from it by the abridgment or deprivation of an old prerogative, or by a declaration, that he never was legally entitled unto it.

This abridgment of the royal prerogative was a third alteration made in the constitution at the revolution.

I have said thus much of the existence and extinction of the *dispensing power*, to convince my readers, that such is the vigilance

Our security in the political equipoise of the constitution.

of every branch of the legislature upon each other, that we may rest secure in their political equipoise, that none of them will outgrow or absorb the other. If in the variety and change of political occurrences it shall be found requisite either to abridge or enlarge the prerogative of the sovereign, it behoves us to confide in the readiness and zeal of our deputies and trustees to effect it. Let no body look upon our present sovereign, as less qualified and enabled to fulfil the executive functions of government, than his ancestors, whose prerogatives were in some points more extensive and numerous than his. What has been pruned off from the precarious branches of prerogative has been engrafted upon the double bearing stock of royal influence.

The effects of  
royal influence.

\* "From the revolution in 1688 to the present time; in this period many laws have passed; as the bill of rights, the toleration-act, the act of settlement with its conditions, the act for uniting England with Scotland, and some others; which have asserted our liberties in more clear and emphatical terms; have regulated the succession of the crown by parliament, as the exigences of religious and civil freedom required; have confirmed, and ex-

\* Black. Com. b. iv. c. 33. sub. fin.

emplified

emphased the doctrine of resistance, when the executive magistrate endeavours to subvert the constitution ; have maintained the superiority of the laws above the king, by pronouncing his dispensing power to be illegal ; have indulged tender consciences with every religious liberty consistent with the safety of the state ; have established triennial, since turned into septennial elections of members to serve in parliament ; have excluded certain officers from the house of commons ; have restrained the king's pardon from obstructing parliamentary impeachments ; have imparted to all the lords an equal right of trying their fellow peers ; have regulated trials for high treason ; have afforded our posterity a hope, that corruption of blood may one day be abolished and forgotten ; have (by the desire of his present majesty) set bounds to the civil list, and placed the administration of that revenue in hands, that are accountable to parliament ; and have (by the like desire) made the judges completely independent of the king, his ministers, and his successors. Yet, though these provisions have in appearance and nominally reduced the strength of the executive power to a much lower ebb than in the preceding period ; if on the other hand we throw into the opposite scale (what perhaps

perhaps the immoderate reduction of the ancient prerogative may have rendered in some degree necessary) the vast acquisition of force arising from the riot-act, and the annual expence of a standing army, and the vast acquisition of personal attachment arising from the magnitude of the national debt, and the manner of levying these yearly millions, that are appropriated to pay the interest, we shall find, that the crown has gradually and imperceptibly gained almost as much influence, as it has apparently lost in prerogative."

## CHAP. XIII.

## OF THE HOUSE OF PEERS.

OF the two branches of the legislature I shall first consider the house of lords, of which Mr. Acherly, in his theoretic plan or directions for the Britannic constitution, speaks thus : \* “ That the house of lords, besides their part in the legislature, should be invested with, and should have, as *interwoven in their constitution*, these special powers and *privileges*, viz. that their right of peerage should be deemed a special trust for the whole government ; that they should have the *dernier resort* only in all matters of *judicature*, and the sole judicature of impeachments commenced and prosecuted by the commons ; and that it should be deemed an essential part of that judicature to take cognizances of those impeachments, and to hear and determine the matters therein charged ; and the reason he gave for investing them with the *dernier resort* was, lest *illegal judgments* in inferior judicatures should creep in, and by little and little undermine and change

General end  
and spirit of  
the house of  
peers.

\* Acherly's Brit. Conf. Sec. xii. p. 45.

the



the fundamental *form* and principles of this constitution, of which there might be some danger, in regard the *judges* would be necessarily of the king's *sole* nomination and appointment.

“ But in questions of *property*, where the claims on either side shall not be mixed with equity, this ultimate judicature should (without additions to supply defects) give the same judgments, as are prescribed by the strict and positive laws in being; because these laws should be every man's *birthright*, and should have no *controuler*, nor be *controuled* by any judicature (except only by that *power*, which is to be legislative, in which every man's consent is to be involved;) for if a law and rule of property be made, and a man's case shall not be determined by it, the law and the authority of the makers would be vain and nugatory.”

All laws at all times made with the advice of the great men.

In the earliest traces of any legislative acts passed in this country, we constantly find express and unambiguous mention made of the advice and assistance of the great men (*magnates*) barons, prelates, archbishops, bishops, vavafours, earls, (*comites*,) &c. under which names, appellations, and descriptions some monarchical and aristocratical writers have indeed pretended to doubt, whether com-  
moners

moners were included; but not even the strongest republican writers have ever questioned or denied, that the first orders and ranks of men, or the nobility and dignified clergy were regularly summoned to parliament. Notwithstanding the present rage against the aristocratic part of our constitution, it is curious to consult the opinion of a very determined and staunch republican\* upon the subject. "An army," says he, "may as well consist of soldiers without officers, or of officers without soldiers, as a commonwealth (especially such a one as is capable of greatness) consist of a people without gentry, or of a gentry without a people. There is something first in the making of a commonwealth; then in the governing of it; and last of all in the leading of its armies, which (though there be great divines, great lawyers, great men in all professions) seems to be peculiar only to the genius of a gentleman."

Aristocracy necessary for a commonwealth.

In explaining and accounting for the aristocratical part of our constitution, it may be expected, that I should trace not only the source and origin of this branch of the legislature, but also that I should delineate

\* James Harrington, the celebrated author of *Oceana*. Vid. Tolland's *Anglia libera*, p. 59.

Of the origin of the aristocratic part of our constitution.

the different degrees, dignities, and denominations, by which it was formerly known and distinguished. To do this satisfactorily will require a longer digression than the intent and purport of this publication will admit of. Such of my readers, as may wish to acquire a more particular knowledge of this subject, will receive the most satisfactory information from the first volume of the learned Mr. Gurdon's history of the high court of parliament. Suffice it for me to observe, that our present aristocracy is much altered from what it formerly was, both in its relative and absolute rights, privileges, powers, and duties.

The ancient wittenagemotte.

In our earliest history the great council of the nation under the Saxons, who concurred with the king in passing laws, was called *Wittenagemotte*: \* “ a word compounded of Saxon and British, the former part of the word being *Saxon*, and the latter *British*. *Witta* is in Saxon, a wise man (i. e.) a nobleman; *Gemot*, in the British language, is a council or synod, so *Wittenagemotte* is a council of wise men or noblemen.” According to the rude practices and habits of the warlike Saxons, they naturally allowed

\* Gurdon, vol. i. p. 21.

an exclusive superiority of knowledge or wisdom to such, as had acquired the then rare advantages of education, which were only enjoyed by the clergy, and some of the most opulent and powerful individuals of the community. They annexed not this attribute of wisdom to these national counsellors, as a native and hereditary prerogative in the sense, in which some modern illuminators speak in derision of hereditary wise men and counsellors; but they presumed very justly, that in the general average of men's intellectual faculties or talents, a superiority or pre-eminence of wisdom must necessarily attend the advantages of cultivation and improvement. The general diffusion of knowledge through all ranks of people in the present age, has happily rendered this ancient distinction imperceptible to the present generation.

The ancient  
wittas called  
wise, from the  
advantages of  
their education.

There are obvious reasons, why formerly the representatives or delegates of the nation were not, as they now are, divided into two separate bodies; for it is very evident, that the original spirit or principle of representation in this community was grounded upon the possession of property, not upon the numbers of individuals. \* “ The Britons called their

Property not  
numbers the  
original ground  
of representa-  
tion.

\* Gurdon on Parliament, page 15.

councils *Kifrithin*, which in the British language imports to debate and treat upon matters to be taken into consideration for the public weal. The members of their councils were their *Edlins* \*, which were of royal or princely race, and the governors of districts or lords of villages : the husbandmen, and all the common people, were esteemed no more than servants, had no interest in land, being removeable at the will of their lord, they being villeins to their lords, were not admitted to sit in council.” Whence a copyholder, who by holding of the lord of the manor retains something of the ancient tenure, is not even at this day qualified to vote for a member of parliament.

Why copyholders not qualified to vote.

The original Saxon aristocracy.

This principle of representing the landed property of the nation continued after the whole system of landed property was altered. For the Saxons undertook the conquest of this country upon a joint engagement to divide the conquered lands proportionably amongst the leaders as they had contributed their respective quotas to the enterprise. † The joint undertakers, who were

\* Or *Ethelings*, hence Edgar Etheling meant Edgar of the blood royal, or kingly race.

† Gurdon on Parliament, p. 23.

at first by the Latin authors termed *capitanei*, as having a capital or original right in the shares of the Britons lands ; and these *capitanei* were not only sharers with the kings in the conquered lands, but also in the administration of the government, being members of the king's great council, and therein had a deliberative authority in consenting to laws and the highest matters of state ; they also had a judicial authority, being the supreme court of judicature of the nation."

\* "These colleagues, and their descendants, were the *Saxon nobles*, that were members of the great councils, the suitors of the court of the grand feigniory of the kingdom, all nobility at that time arising from possession." Original nobility arose from property.  
In these ancient days, the aristocratical part of the community were known or distinguished only from the rest of the community, by rights, privileges, and prerogatives attached to the property they possessed ; and as the greatest of these consisted in their enjoying a share in the legislature, it is unfair to conclude, that the commonalty or democratical part of the community were not formerly represented in parliament ; for the persons, who at that time represented the whole

\* Gurdon on Parliament, p. 163.

nation,

The ancient members of the national council resembled more our commoners, than our peers.

nation, were only distinguished from the democratical part of it by this very right of representation, which was not then elective, but hereditary; and if we consider the nature of the duty, trust, and rights of these delegates or representatives of the public, we shall find them resemble much more those of the commoners, than of the peers of our present parliament.

Whether summons to parliament anciently conferred nobility.

There are many points warmly controverted by antiquarians concerning the ancient English barons, who either attended the national assemblies or parliaments, at stated times *de more*, or were summoned on extraordinary occasions to attend them. The whole episcopal order, and many abbots and priors were admitted by all to have been a constant part of the wittas in the wittenagemotes, and in all subsequent conventions of the nation down to the regular and separate establishment of a house of commons, by whatsoever descriptions they were distinguished. It is not material to my present purpose to consider, whether all, who were in those times summoned to parliament, either as *barones majores*, *barones minores*, knights, or tenants in *capite*, or by any other titles, as earls, viscounts, vavassours, &c. were thereby so ennobled, as that their heirs inherited their honours; there certainly

certainly have been instances, in which persons have been summoned by writ to parliament, whose heirs were not thereby ennobled\*. However since there have been two regular and distinct houses of parliament, it appears clear, that every writ of summons actually ennoble the person, to whom it is issued, at least if he ever take his seat in consequence of the summons. But nobility is now generally conferred by letters patent of creation, concerning which there can be no doubt nor uncertainty.

As the landed property of the nation became more equally divided, so the democratical part of the community acquired a proportionate consequence in the state, and it became necessary to abridge and weaken the prerogatives and powers of the aristocratical part of it. The present privileges of peerage bear no proportion to the prerogatives, rights, and powers of the old English barons; but besides allowing for the difference of the customs, practices, and prejudices of former times, it must be admitted, that the ancient *Witas* or members of the great national convention involved both the

The democratical power of the state increased, and the aristocratical diminished.

\* Such were the cases of Mothermer and Camois. Vid. Gurdon, vol. i. p. 188, against Ld. Coke's authority, (1 Inf. 9. 16.)



duties and powers of a modern peer, and member of the house of commons, and consequently concentrated the separate privileges of each in the same individual. For like peers they represented themselves, and like commons they represented all those of the division or district, the command, lordship, or property of which gave them their seat in the council. Thus may we observe how our admirable constitution has at all times been attentive to prune the luxuriances, and prevent the decay of each of its branches.

Spiritual lords  
of parliament.

The aristocratical part or branch of our legislature consists at present of the *spiritual* and *temporal* lords. The spiritual lords \* “ consist of two archbishops and twenty-four bishops ; and, at the dissolution of monasteries by Henry VIII. consisted likewise of twenty-six mitred abbots, and two priors ; a very considerable body, and in those times equal in number to the temporal nobility. All these hold, or are supposed to hold, certain ancient baronies under the king ; for William the Conqueror thought proper to change the spiritual tenure of frankalmoign, or free alms, under which the bishops held their lands during the Saxon government, into the feudal or Norman tenure by barony,

\* Black. Com. b. i. c. ii. sec. 2.

which

which subjected their estates to all civil charges and assessments, from which they were before exempt; and, in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots obtained their seats in the house of lords. But though these lords spiritual are in the eye of the law a distinct estate from the lords temporal, and are so distinguished in most of our acts of parliament, yet in practice they are usually blended together under the one name of *the lords*; they intermix in their votes, and the majority of such intermixture binds both estates. And from this want of a separate assembly and separate negative of the prelates, some writers have argued very cogently, that the lords spiritual and temporal are now in reality only one estate; which is unquestionably true in every effectual sense, though the ancient distinction between them still nominally continues. For if a bill should pass their house, there is no doubt of its validity, though every lord spiritual should vote against it; of which Selden and Sir Edward Coke give many instances; as, on the other hand, I presume it would be equally good, if the lords temporal present were inferior to the bishops in

*Lords spiritual  
and temporal  
one estate.*

number, and every one of those temporal lords gave his vote to reject the bill, though this Sir Edward Coke seems to doubt of."

Of the bishops' right to vote in capital cases.

It was in the last century very warmly debated, whether the bishops could retain their seats, and judge and vote in capital cases and questions. Without however going into the different arguments and reasons for or against the point, I shall hope that the very forms of such capital acts of parliament will sufficiently prove, that the constitution supposes the bishops present, and as active in passing these or any other bills. I need not say, that the right, by which the bishops sit in parliament, is purely a *civil* not a *spiritual* right; and if they have at one time been so attentive to their *spiritual* sacerdotal character, as to hold themselves bound by the canons of the church not to assist at or judge any criminal cause, we find them at another equally active with the temporal lords in maintaining in their civil capacity, as lords of parliament, their right or rather duty to judge causes of the highest criminal nature possible; for it is equally a matter of blood, whether a man's life be taken away by attainder or by impeachment. And by the canon law, and by an ordinance made at the council

council at Westminster, in 21 Hen. II.  
\* all clergymen were forbidden *agitare judicium sanguinis* : now there cannot be a more convincing argument, that the canon law, and other ecclesiastical ordinances acquire a coercive or binding force, only in as much as they are countenanced or adopted by the civil legislature, than the two following protestations, which I shall quote from the rolls of parliament. † “ The first was made by the spiritual lords, (11 Ric. II. A. D. 1387) when they refused to assist at the trial of divers lords and others being appealed of high treason and other misdemeanors, saving their *right* (as peers of Parliament) nevertheless to be present in parliament. The other was (in the 28th of Hen. VI. A. D. 1449.) when William de la Pool, Earl Marshall, and Duke of Suffolk, was impeached by the commons of high treason, and he required of the king, that he might be especially accused, and be heard to answer, and so submitted himself to the king’s pleasure ; whereupon the king had undertaken to pass judgment upon the matter contained in the bill

\* Selden’s Judicature in Parliament, p. 151.

† Vid. also the Rights of the Bishops to judge in capital cases, printed in 1680.

for high treason out of parliament solely and by himself in an extra-judicial manner.

The bishops claim their right to be present in all parliaments, and on all occasions.

\* “ In the name of God, amen : Whereas *by the law and custom of the kingdom of England*, it doth belong to the archbishop of Canterbury for the time being, and the other his suffragans, brethren, and fellow bishops, abbots, and priors, and all their other prelates whatsoever, who hold by barony of our lord the king, to be personally present in all parliaments whatsoever, as peers of the kingdom, and there to consult, treat of, ordain, constitute, and determine of the affairs of the kingdom, and other things there usually treated of, together with the rest of the peers of the said kingdom, and others having interest there, and to do all things, which there may happen to be done. In all and every of which, we William archbishop of Canterbury, primate of England, and legate of the apostolic see, do protest for ourselves, our suffragans, and fellow bishops, and all the abbots, priors, and prelates aforesaid, and every one of them doth protest by themselves, or by his proxy, if so he was present, both publicly and expressly, that we

\* Rot. Parl. 11 Ric. 2.

intend,

intend, and do intend, and every one of us will in this present parliament, and in all others, be present as peers of the said kingdom, in the usual manner, to consider of, treat, enact, constitute, and determine, and to do all other things with others, who have power of being present in the same, our estate and order, to every one of us in all things saving unto us entire. But because in this present parliament some matters will be treated of, in which it is not lawful for us \*, or any of us, according to the institutions of the holy canons, or canonic law, in anywise to be personally present, therefore for ourselves, and for every one of us, we protest, and every one of us here present doth protest, that we intend not, neither will, as by the law we cannot, neither doth any of us intend, nor will any of us in anywise be present in this present parliament, whilst any of those matters are debated, or shall be debated of. But upon that account, we and every one of us will absent ourselves; the right of our peerage, and the right of every one of us, being present in the said parlia-

Bishops forbidden by canon law, to debate upon capital cases.

\* Note this diversity: in their ecclesiastical or clerical capacity they have obligations which in their lay capacity they do not avow; for though they be subject to the canon law, they are also fully subject to the municipal civil law, and in no manner exempt from it.

ment,

They claim the right for their successors to be present in parliament, at all times, and on all occasions.

ment, as to all and every thing there to be done agreeable to our estate and order in all things to every one of us saved entire. Moreover we protest, and every one of us doth protest, that by reason of our absence as aforesaid, we intend not, nor will, neither doth any of us intend or will, that the process had or to be had in this present parliament in the matters aforesaid, in which we cannot and ought not as aforesaid to be present, as to what relates to us, or any of us, shall in time to come be in anywise impugned, weakened, or repealed."

\* "And forthwith the Viscount Beaumont, on the behalf of the said lords spiritual and temporal, and by their advice, assent, and desire, recited, said, and declared to the king's highness, that this that was so decreed concerning the person of the said duke, William de la Pool duke of Suffolk, proceeded not by their advice and counsel; but was done by the king's own demeanance and rule; therefore they besought the king, that this their saying might be enacted in the parliament roll, for their more declaration hereafter, with this protestation, that it should not be, nor turn in prejudice nor derogation of them,

\* Rot. Parl. 28 Hen VI.

their

their heirs, nor of their successors in time coming, but that they have and enjoy their liberties and freedoms in case of their peerage hereafter, as freely and as largely as they or any of their ancestors had and enjoyed before this time."

The rights of the lords spiritual in parliament claimed for ever.

It cannot be pretended, that the word *spiritual* is here inserted without its full meaning, for the representatives of the *spiritual* lords are described by the word *successors*, as the representatives of the *temporal* lords are by the word *heirs*; and neither is applicable to the other. Now if this canon law or ecclesiastical ordinance were paramount to the municipal law, from which they acquired their right of sitting in parliament, then must it be allowed, that the bishops had no right to judge or vote in capital cases; and every act of parliament affecting the life of a person, must have been passed without the advice and consent of the lords *spiritual*; whereas no act appears upon our statute books, expressed to have been enacted with the advice and consent of the lords *temporal* only, and therefore I conclude against Mr. Selden, and many others, that the constitution knows of no difference of parliamentary duty, right, power, or jurisdiction, between the *spiritual* and the *temporal* lords; and I shall

No difference between the rights of the lords *spiritual* and *temporal* in parliament.



shall hereafter speak indiscriminately of their common rights, duties, and privileges, which the constitution has vested in them as peers of parliament.

Temporal lords.

\* “The lords temporal consist of all the peers of the realm, (the bishops not being in strictness held to be such, but merely lords of parliament) by whatever title of nobility distinguished, dukes, marquisses, earls, viscounts, or barons; of which dignities we shall speak more hereafter. Some of these sit by descent, as do all ancient peers; some by creation, as do all new-made ones; others, since the union with Scotland, by election, which is the case of the sixteen peers, who represent the body of the Scots nobility. Their number is indefinite, and may be increased at will by the power of the crown; and once, in the reign of queen Anne, there was an instance of creating no less than twelve together; in contemplation of which, in the reign of king George I. a bill passed the house of lords, and was countenanced by the then ministry, for limiting the number of the peerage. This was thought by some to promise a great acquisition to the constitution, by restraining the prerogative from

Bill to limit the number of peers passed the lords, and was thrown out by the commons.

\* Black. Com. b. i. c. 2.

gaining the ascendant in that august assembly, by pouring in at pleasure an unlimited number of new-created lords. But the bill was ill-relished, and miscarried in the house of commons, whose leading members were then desirous to keep the avenues to the other house as open and easy as possible."

It will be foreign from my purpose to attempt an investigation of the original creation or distinction of the nobility of this realm; or even of the manner and time of their becoming a constitutional branch of the legislature. After the murder of king Charles the First, the house of commons, on the 6th February 1648, \* "voted that the house of peers in parliament was useless and dangerous, and ought to be abolished; and that an act should be brought in for that purpose; as also, that the peers should not be exempt from arrests; but did admit that they should be capable of being *knights* and *burgesses* in parliament, in case they were elected." This was a most audacious usurpation by the house of commons (or whatever that convention of the regicide party were to be called) upon the very essence of the constitution; and the enormity of the

The house of lords voted useless in 1648.

\* Dugdale's Short View of the late Troubles, c. xxxiii. p. 385.

precedent gave rise to many elaborate, and some erudite, but all violent dissertations upon the original separate rights of the lords and commons.

Disputes about the original rights of the commons in legislating.

These disputes became at last resolved into this simple question, whether the commons of England, represented by knights, citizens, and burgessees freely chosen, had formerly (viz. before the 49th Hen. III. A. D. 1274) any vote or share in making the laws of the kingdom, or whether they were not made by the king, with the advice and consent of the *magnates, procures, optimates, nobiles*, prelates, abbots, *comites*, earls, barons, wites, *sapientes*, &c. summoned by the king? no description of whom answers to the modern idea of a member of the house of commons. Either alternative of this warmly contested dispute, may, I conceive, be safely adopted without the slightest abatement of that respect and submission, which every loyal subject owes to the present form of the British constitution.

Leveller's horror of aristocracy.

The predominant feature of the republican, or independent, or levelling party has ever been a sovereign horror of any superiority of power in others; this therefore operated generally against the aristocratic part of the constitution; for the commonalty were in many respects

respects certainly inferior to the peers of the realm. The crown and the mitre however were the hateful marks, at which they have unwearily directed their rancorous shafts of discontent. It has therefore been strenuously and artfully argued, supposed, and affirmed, that the spiritual lords make no constitutional necessary part of the house of peers. \* “ The second estate is constituted of both the *spiritual* and *temporal lords* jointly; for” (say they) “ though the *archbishops* and *bishops* are denominated *spiritual*, yet they sit in parliament as *temporal* barons only, (i. e.) by reason of the *temporal baronies* annexed to their *bishopricks*, and not as they are *spiritual persons*. And they further urge, in confirmation of their opinion, first, That no bishop, notwithstanding his election, consecration, confirmation, &c. can be a *lord* of, or sit in *parliament*, till the king has granted to him

The second estate consists of the lords spiritual and temporal.

How the lords spiritual are qualified to sit in parliament.

\* Lex Parliamentaria, p. 3. which refers to Cotton's Records, 709, 710. 4 Inst. 1. Hales of Parliaments, i. Finch's Nemotecnia, lib. ii. c. 1. Sadler's Rights of the Kingdom, p. 79 to 93. Kelway's Reports, 184. Stanif. Pl. Cor. 153. See Bagshaw's Readings, p. 17. to 21. N. B. Though this statute was repealed by queen Mary, yet that repeal was repealed by queen Elizabeth, &c. as the parliament at Bury, 24 Edw. I. 1 Eliz. all the acts about religion passed *disfidentibus episcopis*. See Journal Dom. Procer. 11 H. VII. 27 Bro. Par. 107. Kelway, 184.

the

the temporalities of the bishoprick. Secondly, That by virtue of the statute 1 Edw. VI. c. 2. still in force, the king may constitute bishops by his letters patent only, without any election or consecration \* ; and thirdly, That

\* Whoever believes that our blessed Lord has established a church upon earth, must never lose sight of the difference between the real spiritual right, power, and jurisdiction of the pastors of that church, and the right, power, and jurisdiction, which they may derive from the civil establishment of religion. The real spiritual elevation to the episcopal order or dignity can only be effected by the consecration, which no sovereign of this realm ever pretended or attempted to perform ; and the validity of this consecration must depend upon the capacities or spiritual qualifications of the parties consecrating and consecrated ; if the latter be not in holy orders, and the former rightly ordained and consecrated, no one can be so raised to the spiritual dignity of a bishop in the church of Christ, as to command the spiritual obedience or submission of any member of his church. Neither the recommendation by *conge d'elire*, letter missive, nor nomination and presentation by letters patent under the great seal, nor confirmation, investiture, nor admission to the temporalities by the king, can change the quality of a man from *lay* to *clerical*, nor elevate him from simple priesthood to the dignity of a bishop. The case is similar in the *presentations*, *institutions*, and *inductions* of the inferior clergy. The *presentation* of the clerk to the bishop by the patron is a mere civil right given by the laws, which constitute the civil establishment of religion, and may be exercised by a *presbyterian*, *quaker*, or *Jew*, as well as by a member

That parliaments have been, and may be holden, *excluso clero*, exclusive of the bishops and clergy, and that some of our most beneficial statutes have been enacted, whereto the whole body of the clergy dissented; all which, they say, prove the bishops to be no *essential part*, or any of the *three estates of parliament*. And in *Trinity* term, 7 H. VIII. it is agreed

member of the established church. By the *institution*, the bishop, in exercise of his real *spiritual* power, or pastoral jurisdiction over a part of the church of Christ, commits the care of the souls of the parish to the charge of the clerk, who from that time becomes the *spiritual* subject of his bishop. *Institution* therefore is properly the investiture of the *spiritual* part of the benefice. The *induction* is directed by the civil establishment of religion, and is nothing more than an open and notorious delivery over to the clerk, of the corporal possession of the *church*, to notify to the parishioners their new minister; to whom tythes are to be paid; and this is properly the investiture of the temporal part of the benefice. Mr. Collier, speaking of Bishop Bonner's commission to execute all the branches of episcopal authority under his highness Lord Cromwell, vicegerent and vicar general, &c. says, (pt. ii. b. iii p. 169.) "But if the church is a distinct and entire society, if in pure spirituals she is constituted independent on all the kings on the earth; if she is furnished with powers sufficient to answer the ends of her charter; if these powers were settled by our Saviour upon the apostles and their successors to the world's end; if the hierarchy can make out this title, then must I crave leave to think those, who suggested the draught of this instrument were no great divines," &c.

by

by all the judges of *England*, that the *king* may well hold his *parliament* by himself, and his *lords temporal* and *commons*, without any *bishops* or *spiritual lords* at all.

The constitution neither requires nor takes notice of the absence of the bishops.

Right of protesting, and of voting by proxy.

However it now appears unquestionable, that since the constitution excludes the bishops from judging and voting in no case whatever, it takes no more notice of their voluntary personal absence or dissent, than of the discretionary succession or protest of any temporal peer; for the vote of the majority binds the dissenters and protesters as fully, as if they had assented to the question of debate. The right of entering a protest is a special privilege of the house of lords, as is that of voting by proxy \*; but it weakens not the voice of the majority in any shape or degree whatever.

The

\* So late even as the 35 Edward III. A. D. 1360, several peereffes were summoned to parliament. as Mary countess of Arundell, and nine others at the same time; they were called *ad colloquium & tractatum*, by their proxies, a privilege peculiar to the peerage, to appear and act by proxy. King Edgar's charter to the Abbey of Crowland, A. D. 961, was with the consent of the nobles and abbesses, who subscribed it; for many abbesses were formerly summoned to parliament, (Gurdon, vol. i. p. 202.) In those ancient times the lords were not obliged to make barons only their proxies in the house of lords, as the custom now is, but the bishops and parliamentary abbots usually gave their letters of proxy to prebendaries, parsons, canonists, and such like,

The first act of queen Elizabeth, to *restore to the crown the ancient jurisdiction over the estate ecclesiastical and spiritual, and for abolishing all foreign powers repugnant to the same* is made at the special request of *her faithful and obedient subjects the lords spiritual and temporal.* The next act, *For the uniformity of common prayer and service in the church, and administration of the sacraments,* is enacted by the authority of this *present parliament,* and *with the assent of the lords and commons,* without once mentioning the lords *spiritual* through the whole act. Now although each spiritual lord of parliament had dissented from this act, and protested against it in the most solemn manner, yet their consent to it is as much involved and included in the act, as if they had consented, and had been especially mentioned and described, as they were in the first act. And on the other side, although no bishop may have been present, or had voted for the passing of the Act \* *for the attainder of those, who were concerned in the gunpowder treason,* yet it is particularly recited to have been passed at the special request of his majesty's *most loyal, faithful, and true hearted*

The consent of the lords *spiritual* included equally whether mentioned or not mentioned in the act.

like, as appear in the Journals of the house of lords; but since the first year of *Henry VIII.* there appear in the Journals no proxies, but such as were barons of parliament.

\* Jac. I. c. ii.



*subjects, the lords spiritual and temporal, and commons ; which clearly shews, that as the constitution does not require their absence from any parliamentary proceeding, whether capital or other, so are they always supposed, or rather enjoined, to assist and vote like other peers of parliament, as their consent, even in such direct capital acts, is expressed to be included.*

The advantage  
of the house of  
peers in our  
constitution.

The late judge Blackston with great propriety sets forth the utility, expediency, and advantage of an hereditary house of peers in our constitution. \* \* A body of nobility is also more peculiarly necessary in our mixed and compounded constitution, in order to support the rights of both the crown and the people, by forming a barrier to withstand the encroachments of both. It creates and preserves that gradual scale of dignity, which proceeds from the peasant to the prince ; rising like a pyramid from a broad foundation, and diminishing to a point as it rises. It is this ascending and contracting proportion, that adds stability to any government ; for when the departure is sudden from one extreme to another, we may pronounce that state to be precarious. The nobility therefore are the pillars, which are reared from

\* Black. Com. b. i. c. 2.

among the people more immediately to support the throne; and if that falls, they must also be buried under its ruins. Accordingly when in the last century the commons had determined to extirpate monarchy, they also voted the house of lords to be useless and dangerous. And since titles of nobility are thus expedient in the state, it is also expedient, that their owners should form an independent and separate branch of the legislature. If they were confounded with the mass of the people, and like them had only a vote in electing representatives, their privileges would soon be borne down, and overwhelmed by the popular torrent, which would effectually level all distinctions. It is therefore highly necessary, that the body of nobles should have a distinct assembly, distinct deliberations, and distinct powers from the commons."

Reasons why the privileges of the peers are hereditary.

\* "The peers of the realm are by their birth hereditary counsellors of the crown, and may be called together by the king to impart their advice in all matters of importance to the realm, either in time of parliament, or, which hath been their principal use, when there is no parliament in being. Accordingly

The use, prerogatives, and duties of the peers:

Black. Com. b. i. c. 5.

C c 2

Bracton,

Bracton speaking of the nobility of his time says, they might properly be called '*consules, a consulendo; regis enim tales sibi assistant ad consulendum.*' And in our law books it is laid down, that peers are created for two reasons; 1. *Ad consulendum*; 2. *Ad defendendum regem*; for which reasons the law gives them certain great and high privileges; such as freedom from arrests, &c. even when no parliament is sitting; because the law intends, that they are always assisting the king with their counsel for the commonwealth; or keeping the realm in safety by their prowess and valour."

The house of peers the supreme court of judicature.

\* The house of peers is the supreme court of judicature in the kingdom, having at present no original jurisdiction over causes, but only upon appeals and writs of error, to rectify any injustice or mistake of the law committed by the courts below. To this authority they succeeded of course, upon the dissolution of the *aula regia*. For, as the barons of parliament were constituent members of that court, and the rest of its jurisdiction was dealt out to other tribunals, over which the great officers, who accompanied those barons were respectively delegated to provide, it followed,

\* Black. Com. b. iii. c. 4.

that the right of receiving appeals, and superintending all other jurisdictions, still remained in that noble assembly, from which every other great court was derived. They are therefore in all causes the last resort, from whose judgment no farther appeal is permitted; but every subordinate tribunal must conform to their determinations; the law reposing an entire confidence in the honour and conscience of the noble persons, who compose this important assembly, that they will make themselves masters of those questions, upon which they undertake to decide; since upon their decision all property must finally depend."

This jurisdiction of the house of peers is more clearly represented by Mr. Erskine, in his argument upon the rights of juries, in the case of the Dean of St. Asaph: \* "This popular judicature was not confined to particular districts, or to inferior suits and misdemeanors, but pervaded the whole legal constitution; for when the Conqueror, to increase the influence of his crown, erected that

The peers were originally jurors in the king's court.

\* Page 128, 129. This ingenious and instructive argument will serve as a correct constitutional chart for juries to direct their course by in determining the fates of their countrymen, against any superior awe or collateral bias.

great superintending court of justice in his own palace, to receive appeals criminal and civil from every court in the kingdom, and placed at the head of it the *capitalls justiciarius totius Angliæ*, of whose original authority the chief justice of this court is but a partial and feeble emanation, even that great magistrate was in the *aula regis* merely ministerial; every one of the king's tenants, who owed him service in right of a barony had a seat and a voice in that high tribunal; and the office of justiciar was but to record and to enforce their judgments.

“ In the reign of king Edward the First, when this great office was abolished, and the present courts at Westminster established by a distribution of its powers, the barons preserved that supreme superintending jurisdiction, which never belonged to the justiciar, but to themselves only, as the jurors in the king's court; a jurisdiction which, when nobility, from being territorial and feudal, became personal and honorary, was assumed and exercised by the peers of England, who without any delegation of judicial authority from the crown, form to this day the supreme and final court of English law, judging in the last resort for the whole kingdom, and sitting upon the lives of the peerage, in  
their

their ancient and genuine character, as the peers of one another."

The high court of parliament is the supreme court in the kingdom for the trial of great and enormous offenders, whether lords or commons, in the method of parliamentary impeachment; for an impeachment before the lords by the commons of Great Britain is a presentment to the most high and supreme court of criminal jurisdiction, by the most solemn grand inquest of the whole kingdom.

The house of peers is the supreme court for parliamentary impeachment.

\* A commoner cannot however be impeached before the lords for any capital offence, but only for high misdemeanors; a peer may be impeached for any crime. And they usually (in case of the impeachment of a peer for treason) address the crown to appoint a lord high steward for the greater dignity and regularity of their proceedings. The articles of impeachment are a kind of bills of indictment found by the house of commons, and afterwards tried by the lords; who are in cases of misdemeanors considered not only as their own peers, but as the peers of the whole nation.

The office of a lord high steward.

\* Black. Com. b. iv. c. xix. and Hale's Pl. Cor. Pt. ii. 150.

\* “ The execution of all our laws hath been long since distributed by *parliament* out of inferior courts in such sort, as the subjects were directed where to complain, and the justices how to redress wrongs, and punish offences ; and this may be the reason of the judges opinion in Thorp’s case, 31 Henry VI. num. 37.

“ That actions at common law are not determined in this high court of *parliament*, yet complaints have ever been received in *parliaments*, as well of private wrongs as public offences. And according to the quality of the person, and nature of the offence, they have been retained or referred to the common law.

They were not  
anciently bound  
to try any offender  
who was  
not their peer.

“ Touching the quality of the person, the lords of the *parliament* did not anciently try any offenders, how great soever the offence was, unless he were their peer. As by that of 4 Edward III. num. 2. where when the king commanded the lords to give judgment on *Simon de Beresford* and divers others also, who were not their peers, for the murder of Edward II. and the destruction of the earl of *Kent* son of Edward the First, a proviso and agreement was made and recorded in

\* Selden’s Judic. in Parliament, p. 1. & seq.

these

these words; *Et est assensu & accord.* &c. and it is assented and accorded by our lord the king, and all the grandees in full *parliament*, that albeit the peers as judges of the *parliament* have took upon them and rendered the said judgment, &c. that yet the said peers, who now are or shall be in time to come, be not bound or charged to render judgments upon others than peers; nor that the peers of the land have power to do this, but thereof ever to be discharged and acquitted; and that the aforesaid judgment rendered be not drawn to example or consequence in time to come, whereby the said peers shall do contrary to the laws of the land, if the like case happen, which God forbid. 4 Edward III. num. 6. This proviso and agreement was made by the lords and commons, and it had these respects: First, to satisfy the commons, that the lords by these judgments intended not to alter the course of the common law, and therefore they disclaimed, that they had power to do this, and confess it was contrary to the law of the land.

Their right and obligation to try offenders ascertained.

“ Secondly, To preserve their own right to judge none but the peers in case of life and death. For then the king’s steward is to sit in the chancellor’s place, and the lords are to

In judging on the life and death of their peers, the lord high steward sits for the chancellor and



the peers are  
both tryers and  
judges.

to be tryers and judges ; and so by judging others, than their peers descended below their degrees, for none but peers are so to be tried and judged. It is otherwise in cases of misdemeanors ; then the chancellor keeps his place, and the lords are only judges and not tryers ; they may command a jury to be impannelled.

“ For trial of the facts, if the truth appear not by the parties’ answer, the testimonies are exhibited as 1 R. II. in the case of *Alice Pierce*. Here ariseth a question :

The spiritual  
lords triable by  
their peers in  
parliament.

“ *Whether the spiritual lords de jure, are triable by their peers, or no ?*

“ Out of parliament they are not to be tried by the peers ; but the doubt is, whether in time of parliament, they are to be so tried, or no ? To me it seems they may, if the matter be moved against them in time of parliament. For as it is in the parliament at York, 15 Ed. II. in the act for the repeal of the *Spencers* banishment, they are peers in parliament. Note, that the petition for the repeal saith, that the bishops are peers in parliament. The bishops name themselves peers of the land ; and the chancellor to the king, and the act stiles them peers of the land in parliament.

“ There be divers precedents also of the trial

trial of bishops by their peers in *parliament*, as well for capital offences as misdemeanors, whereof they have been accused in *parliament*."

I cannot better finish this subject of the peers, than by citing the honourable testimony made of their justice and equity, by a very judicious modern writer. \* "If we turn our views towards the house of lords, we shall find, that they have also constantly taken care, that their peculiar privileges should not prove impediments to the common justice, which is due to the rest of the people. They have constantly agreed to every just proposal, that has been made to them on that subject by the commons; and indeed if we consider the numerous and oppressive privileges claimed by the *nobles* in most other countries, and the vehement spirit, with which they are commonly asserted, we shall think it no small praise to the body of the nobility in England (and also to the nature of that government, of which they make a part) that it has been by their free consent, that their privileges have been confined to what they now are, that is to say, to no more in general, than what is necessary to the accom-

The justice and equity of the house of peers.

\* De Lolme on the Conf. of Eng. p. 373.

plishment of the end, and constitutional design of that house.

Their incorruptibility in judging.

“ In the exercise of their judicial authority with regard to civil matters, the lords have manifested a spirit of equity no wise inferior to that, which they have shewn in their legislative capacity. They have, in the discharge of that function (which of all others is so liable to create temptations) shewn an uncorruptness really superior to what any judicial assembly in any other nation can boast. Nor do I think, that I run any risk of being contradicted, when I say that the conduct of the house of lords, in their civil judicial capacity, has constantly been such as has kept them above the reach of even suspicion or slander.

“ Even that privilege, which they enjoy, of exclusively trying their own members in case of any accusation, that may affect their life (a privilege which we might at first sight think repugnant to the idea of a regular government, and even alarming to the rest of the people) has constantly been made use of by the lords to do justice to their fellow subjects; and if we cast our eyes either on the collection of the *state trials*, or on the history of England, we shall find very few examples, if any, of a peer really guilty of the

the offence laid to his charge, that has derived any advantage from his not being tried by a jury of *commoners*.”

Before I enter upon the third branch of the legislature, I beg leave to submit to my readers one obvious reflection upon the excellent constitution of the aristocratical power or estate in our government, which besides all the active and passive checks, which it commands upon the two other branches of the legislature, provides also a natural and intrinsic security to the people against incroachments, insolence, and oppressions, but too frequently the fatal effects of superiority and pre-eminence of rank in other countries. By whatever privileges or prerogatives the peers are still distinguished from or elevated above the people or commoners in this country, they are enjoyed solely and personally by the peers themselves, but do not, unless in some very slight instances, affect any part of their families \*, who, though commonly called *noble*, yet in reality remain commoners, and are represented in parliament by the third estate of the kingdom. So the

Security against the insolence and oppressions of the nobility.

\* Such are the right of peeresses to be tried by the peers; some honourable appellations and distinctions of their immediate children in rank and precedence, &c.

lords *spiritual*, whose dignities are not hereditary, can have no temptation nor inducement to oppress, vilify, or injure that estate, of which their own family is and must for ever remain a part. The *temporal* lords, who in the ordinary course of nature have generally spent the most active, spirited, and ambitious part of their lives as commoners, and most frequently as members of the house of commons, and who at most times have more than one of their family in the house of commons, whilst they enjoy their hereditary seats in the house of peers, are for these, as well as the more generous and elevated motives of patriotism, so congenial with their noble breasts, emphatically withholden from attempting any encroachments or oppressions, or even feeling a sense of contempt, and much less of oppressive insolence, towards the third and most numerous estate of the community.

# CHAP. XIV.

## OF THE HOUSE OF COMMONS.

\* “**T**HE *third estate*, of which we shall herein principally treat, is on all hands confessed to consist of the *knights, citizens, and burgessees*, with the barons of the *cinque-ports*; all which being at this day elected by the free votes of the freemen of *Great-Britain*, are properly esteemed the representative body of the people, and constitute that part of the parliament, usually called the *house of commons*. (N. B.) The ancient *modus tenendi parl.* reckons up six degrees or orders of parliament, but that division cannot be denominated *six estates*.”

Knights, citizens, and burgessees the representatives of the people.

“ The numbers of the *commons* I find to have been formerly variant, according as the sheriffs of counties (from what motives is uncertain) were pleased to direct their precepts to the several cities or boroughs within their respective counties, or as the same sheriffs made their returns thereupon; but indeed another cause of this variation was, that it was usual for the prince, on his accession to

Their numbers formerly varied according to the discretion of the sheriffs.

\* *Lex Parliamentaria*, p. 4, 5, 6, 7.

the

Kings formerly at their accession granted charters to towns to send representatives to parliament,

the throne; to grant charters to ancient demesne vills, and other popular towns, thereby erecting them into *free boroughs*, and this consequently gave them a right to be represented in parliament; and by this artifice, among others, the crown advanced its interests in the house of commons.

By whom the elections were formerly made.

“For it must be confessed, that by the ancient constitution, there were no representatives of the commons, as commons in parliament, besides the knights for the shires, the barons for the cinque-ports \*, the citizens for the cities, and the burgeses for the ancient boroughs only; and that the elections for all those were to be made by such persons only, as were possessed of lands or tenements, held by them as *freeholds* or *free burgage tenures*, which consequently excluded all villeins and copyholders †, as also tenants in *ancient demesne* (which were but the *king's villeins*) and the tenants and dependants of other *lords*, from being either the *electors*, or *electèd* of the house of *commons* ‡. Indeed, the practice of encreasing the number of the representatives

\* Crompt of Courts, f. 2, 3, &c. Stat. 23 H. VI. c. 11.

† Stat. 12 R. II. c. 12. Crom. 2, 3, 4, 5. Bro. Ant. Dem. 431.

‡ Parl. 96. Reg. 261. Nat. Bre. 14.

of the commons, began very early, viz. *temp.*

*Johan.* (if not before) for I find it a practice of that prince \* to grant, usually in consideration of money, &c. charters to *ancient demefne towns* (as generally all *sea port towns* were) thereby erecting them into free boroughs †, and hence it was, as I conceive, that *Bridport, Dorchester, Harwich, Helfstone, Kingston upon Hull*, and divers other ancient demefne towns came to be erected into *free boroughs*, which originally had no right of being represented in parliament.

King John granted charters for money.

But whatever methods were then taken to increase the number of the house of commons, I find their number to be † much the same from the end of Henry the Sixth's reign ‡, to the beginning of that of Henry the Eighth, viz. about three hundred.

" That H. VIII. added to their	
number	38
King <i>Ed.</i> VI.	44
Queen <i>Mary</i>	25
Queen <i>Elizabeth</i>	62
King <i>James</i> I.	27

The former and present numbers of representatives.

\* See Bohun's Col. per. tot.

† The Representative of London and Westminster, p. 14. to p. 21. Spelm. in voce *Major*.

‡ Fortescue, p. 40.

|| Mmft. penes Auctorem.



King Charles's  
charters de-  
clared void.

Present number  
five hundred  
and fifty-eight

Origin and pro-  
gress of the  
power of the  
commons un-  
der Edward I.

“ And king *Charles I.* about ten or twelve; so that at the time of the restoration of king *Charles II.* I find their numbers to have been about five hundred. But the commons about that time restrained this mischievous practice for the future, so that they declared the elections made by virtue of that prince's charters void; and as *Chester* had been enabled to send two members for the county, and two for the city, by virtue of a \* stat. 34, 35 H. VIII. so an act passed in the 25 *Car. II.* enabling *Durham* to send four members in like manner, and thus the number of the house of commons stood at five hundred and thirteen, till the union of the kingdoms of *England* and *Scotland*, when by virtue of the union act † forty-five *Scottish* members were added, which made the whole number of that house to be five hundred and fifty-eight, as it now stands.”

Mr. De Lolme has collected a very just and impartial historical account of the origin, gradual increase, and establishment of the influence and power of the house of commons ‡. “ Edward I. continually engaged in

\* St. 34, 35. H. VIII. c. xiii. St. 25. c. ii. c. ix.

† St. 5. An. c. viii.

‡ On the constitution of England, c. ii. p. 32. & seq.

wars, either against Scotland or on the continent, seeing moreover his demesnes considerably diminished, was frequently reduced to the most pressing necessities. But though, in consequence of the spirit of the times, he frequently indulged himself in particular acts of injustice, yet he perceived, that it was impossible to extend a general oppression over a body of nobles and a people, who so well knew how to unite in a common cause. In order to raise subsidies therefore, he was obliged to employ a new method, and to endeavour to obtain, through the consent of the people, what his predecessors had hitherto expected from their own power. The sheriffs were ordered to invite the towns and boroughs of the different counties to send deputies to parliament; and it is from this æra, that we are to date the origin of the house of commons \*.

“It must be confessed however, that these deputies of the people were not at first possessed of any considerable authority. They were far from enjoying those extensive privileges, which, in these days, constitute the house of commons a collateral part of the government; they were in those times called

The commons originally summoned only to supply the wants of the king.

• A. D. 1295.

The advantage of legally influencing the motions of government.

up only to provide for the wants of the king, and approve of the resolutions taken by him and the assembly of the lords. But it was nevertheless a great point gained to have obtained the right of uttering their complaints, assembled in a body, and in a legal way to have acquired, instead of the dangerous resource of insurrections, a lawful and regular mean of influencing the motions of the government, and thenceforth to have become a part of it. Whatever disadvantage might attend the station at first allotted to the representatives of the people, it was soon to be compensated by the preponderance the people necessarily acquire, when they are enabled to act and move with method, and especially with concert.

Eleven confirmations of magna charta in Edward's reign, owing to the influence of the commons.

“ And indeed this privilege of naming representatives, insignificant as it might then appear, presently manifested itself by the most considerable effects. In spite of his reluctance, and after many evasions unworthy of so great a king, Edward was obliged to confirm the great charter ; he even confirmed it eleven times in the course of his reign. It was moreover enacted, that whatever should be done contrary to it should be null and void ; that it should be read twice a year in all cathedrals ; and that the penalty of excommunication

munication should be denounced against any one, who should presume to violate it.

“ At length he converted into an established law a privilege, of which the English had hitherto had only a precarious enjoyment ; and in the statute de *tallagio non concedendo* he decreed, that no tax should be laid, nor impost levied, without the joint consent of the lords and commons ; a most important statute this, which, in conjunction with *Magna Charta*, forms the basis of the English constitution. If from the latter the English are to date the origin of their liberty, from the former they are to date the establishment of it ; and as the great charter was the bulwark, that protected the freedom of individuals, so was the statute in question the engine, which protected the charter itself, and by the help of which the people were thenceforth to make legal conquests over the authority of the crown.”

Statute de *tallagio non concedendo*, with *magna charta*, the basis of the English constitution.

\* “ The representatives of the nation, and of the whole nation, were now admitted into parliament ; the great point therefore was gained, that was one day to procure them the great influence, which they at present possess ; and the subsequent reigns afford continual instances of its successive growth.

\* De Lolme, c. iii. p. 41, & seq.

D d 3

“ Under

Under Edward II. the commons annex petitions to the bills, by which they granted subsidies.

Under Edward III. they claim a right of consenting to every law,

and of impeaching ministers of state.

Under Hen. IV. they refused to grant subsidies till answers were given to their petitions.

The progress of their influence legal and sure.

From Hen. V. the wars of the nation prevented any further progress of the influence of the commons.

“ Under Edward the Second, the commons began to annex petitions to the bills, by which they granted subsidies; this was the dawn of their legislative authority. Under Edward the Third, they declared they would not in future acknowledge any law, to which they had not expressly assented. Soon after this, they exerted a privilege, in which consists at this time one of the great balances of the constitution; they impeached, and procured to be condemned some of the first ministers of state. Under Henry the Fourth, they refused to grant subsidies before an answer had been given to their petitions. In a word, every event of any consequence was attended with an increase of the power of the commons; increases indeed but slow and gradual, but which were peaceably and legally effected, and were the more fit to engage the attention of the people, and coalesce with the ancient principles of the constitution. Under Henry the Fifth, the nation was entirely taken up with its wars against France; and in the reign of Henry the Sixth began the fatal contests between the houses of York and Lancaster. The noise of arms alone was now to be heard; during the silence of the laws already in being, no thought was had of enacting new ones; and for thirty years together,

ther, England presents a wide scene of slaughter and desolation.

“ At length, under Henry the Seventh, who, by his intermarriage with the house of York, united the pretensions of the two families, a general peace was re-established, and the prospect of happier days seemed to open on the nation. But the long and violent agitation, under which it had laboured, was to be followed by a long and painful recovery. Henry mounting the throne with sword in hand, and in great measure as a conqueror, had promises to fulfil, as well as injuries to avenge. In the mean time the people, wearied out by the calamities they had undergone, and longing only for repose, abhorred even the idea of resistance; so that the remains of an almost exterminated nobility beheld themselves left defenceless, and abandoned to the mercy of the sovereign,

“ The commons on the other hand accustomed to act only a second part in public affairs, and finding themselves bereft of those, who had hitherto been their leaders, were more than ever afraid to form of themselves an opposition. Placed immediately as well as the lords under the eye of the king, they beheld themselves exposed to the same dangers; like them therefore they purchased their personal

Commons and lords submissive to the first princes of the house of Tudor.

personal security at the expence of public liberty ; and in reading the history of the two first kings of the house of Tudor, we imagine ourselves reading the relation given by Tacitus, of Tiberius and the Roman senate.

“The time therefore seemed to be arrived, at which England must submit in its turn to the fate of the other nations of Europe ; all those barriers, which it had raised for the defence of its liberty, seemed to have only been able to postpone the inevitable effects of power.

The nation kept  
in view the  
principles of  
liberty.

“ But the remembrance of their ancient laws, of that great charter so often and so solemnly confirmed, was too deeply impressed on the minds of the English to be effaced by transitory evils. Like a deep and extensive ocean, which preserves an equability of temperature amidst all the vicissitudes of seasons, England still retained those principles of liberty, which were so universally diffused through all orders of the people, and they required only a proper opportunity to manifest themselves.

“ England besides still continued to possess the immense advantage of being one undivided state.

“ Had it been like France divided into several distinct dominions, it would also have had

had several national assemblies. These assemblies being convened at different times and places, for this and other reasons never could have acted in concert; and the power of withholding subsidies, a power so important, when it is that of disabling the sovereign, and binding him down to inaction, would then have only been the destructive privilege of irritating a master, who would have easily found means to obtain supplies from other quarters.

“ The different parliaments or assemblies of these several states having thenceforth no means of recommending themselves to their sovereign, but their forwardness in complying with his demands, would have vied with each other in granting what it would not only have been fruitless, but even highly dangerous to refuse. The king would not have failed soon to demand as a tribute a gift he must have been confident to obtain; and the outward form of consent would have been left to the people only, as an additional means of oppressing them without danger.

“ But the king of England continued, even in the time of the Tudors, to have but one assembly, before which he could lay his wants, and apply for relief. How great soever the increase of his power was, a single parliament alone

Prudential reasons for parliament submitting to Hen. VIII.



They never  
gave up the  
right of grant-  
ing subsidies.

alone could furnish him with the means of exercising it; and whether it was, that the members of this parliament entertained a deep sense of their advantages, or whether private interest exerted itself in aid of patriotism, they at all times vindicated the right of granting, or rather refusing subsidies; and, amidst the general wreck of every thing they ought to have held dear, they at least clung obstinately to the plank, which was destined to prove the instrument of their preservation.

Henry VIII.  
laws of treason  
abolished by  
Edward VI.

“ Under Edward the Sixth the absurd tyrannical laws against high treason instituted under Henry the Eighth his predecessor were abolished. But this young and virtuous prince having soon passed away, the blood-thirsty Mary astonished the world with cruelties, which nothing but the fanaticism of a part of her subjects could have enabled her to execute.

“ Under the long and brilliant reign of Elizabeth, England began to breath anew; and the protestant religion being seated once more on the throne brought with it some more freedom and toleration.

“ The star chamber, that effectual instrument of the tyranny of the two Henrys, yet continued to subsist; the inquisitorial tribunal of  
the

the high commission was even instituted ; and the yoke of arbitrary power lay still heavy on the subject. But the general affection of the people for a queen, whose former misfortunes had created such a general concern, the imminent dangers, which England escaped, and the extreme glory attending that reign lessened the sense of such exertions of authority, as would in these days appear the height of tyranny, and served at that time to justify, as they still do excuse a princess, whose great talents, though not her principles of government, render her worthy of being ranked among the greatest sovereigns.

Arbitrary though prosperous reign of Elizabeth.

“ Under the reign of the Stuarts the nation began to recover from its long lethargy. James the First, a prince rather imprudent than tyrannical, drew back the veil, which had hitherto disguised so many usurpations, and made an ostentatious display of what his predecessors had been contented to enjoy.

James I. boasts of the king's prerogatives.

“ He was incessantly asserting, that the authority of kings was not to be controuled, any more than that of God himself. Like him they were omnipotent ; and those privileges, to which the people so clamorously laid claim, as their inheritance and birthright, were

were no more than an effect of the grace and toleration of his royal ancestors \*.

Publication of these high notions of royalty caused them to be canvassed.

“ Those principles hitherto only silently adopted in the cabinet, and in the courts of justice, had maintained their ground in consequence of this very obscurity. Being now announced from the throne, and refounded from the pulpit, they spread an universal alarm. Commerce besides with its attendant arts, and above all that of printing, diffused more salutary notions throughout all orders of the people; a new light began to rise upon the nation; and the spirit of opposition frequently displayed itself in this reign, to which the English monarchs had not for a long time past been accustomed.

Storm gathered under James which burst upon Charles I.

“ But the storm, which was only gathering in clouds during the reign of James, began to mutter under Charles the First his successor; and the scene, which opened to view on the accession of that prince presented the most formidable aspect.”

Improvements in the constitution under Charles I.

† “ By the famous act, called the petition of right, and another posterior act, to both which he assented, the compulsory loans and taxes disguised under the name of *benevo-*

\* See his declaration made in Parliament, in the years 1610 and 1621.

† De Lolme, p. 50. & seq.

*lences* were declared to be contrary to law; arbitrary imprisonments, and the exercise of the martial law were abolished; the court of high commission, and the star-chamber were suppressed\*; and the constitution freed from the apparatus of despotic powers, with which the Tudors had obscured it, was restored to its ancient lustre. Happy had been the people if their leaders, after having executed so noble a work, had contented themselves with the glory of being the benefactors of their country. Happy had been the king, if obliged at last to submit, his submission had been sincere, and if he had become sufficiently sensible, that the only resource he had left was the affection of his subjects.

“ But Charles knew not how to survive the loss of a power he had conceived to be indisputable; he could not reconcile himself to limitations and restraints so injurious according to his notions to sovereign authority. His discourse and conduct betrayed his secret

\* The star-chamber differed from all the other courts of law in this; the latter were governed only by the common law, or immemorial custom, and acts of parliament; whereas the former often admitted for law the proclamations of the king in council, and grounded its judgments upon them. The abolition of this tribunal therefore was justly looked upon as a great victory over regal authority.

designs;

Circumstances  
which led to the  
fall of Charles I.

designs ; distrust took possession of the nation ; certain ambitious persons availed themselves of it to promote their own views ; and the storm, which seemed to have blown over, burst forth anew ; the contending fanaticism of persecuting sects joined in the conflict between regal haughtiness and the ambition of individuals ; the tempest blew from every point of the compass ; the constitution was rent asunder, and Charles exhibited in his fall an awful example to the universe.

Vain efforts to  
establish a de-  
mocratical go-  
vernment in  
England.

“ The regal power being thus annihilated, the English made fruitless attempts to substitute a republican government in its stead. ‘ *It was a curious spectacle,*’ says Montesquieu, ‘ *to behold the vain efforts of the English to establish among themselves a democracy.*’ Subjected at first to the power of the principal leaders in the long-parliament, they saw that power expire, only to pass without bounds into the hands of a protector. They saw it afterwards parcelled out among the chiefs of different bodies of troops ; and thus shifting without end from one kind of subjection to another, they were at length convinced, that an attempt to establish liberty in a great nation, by making the people interfere in the common business of government,

ment, is of all attempts the most chimerical; that the authority *of all*, with which men are amused, is in reality no more than the authority of a few powerful individuals, who divide the republic among themselves; and they at last rested in the bosom of the only constitution, which is fit for a great state and a free people; I mean that, in which a chosen number deliberate, and a single hand executes; but in which, at the same time, the public satisfaction is rendered, by the general relation and arrangement of things, a necessary condition of the duration of government." I shall reserve the consideration of the usurpation and protectorate for the last chapter, into which it will be more orderly introduced.

\* "Charles the Second therefore was called over; and he experienced on the part of the people that enthusiasm of affection, which usually attends the return from a long alienation. He could not however bring himself to forgive them the inexpressible crime, of which he looked upon them to have been guilty. He saw with the deepest concern, that they still entertained their former notions with regard to the nature of the royal prerogative, and bent upon the recovery

Restoration of  
Charles II.

\* De Lolme, *ibidem*, p. 54, & seq.

of the ancient powers of the crown, he only waited for an opportunity to break those promises, which had procured his restoration.

Necessity of limiting the prerogative.

“ But the very eagerness of his measures frustrated their success. His dangerous alliances on the continent, and the extravagant wars, in which he involved England, joined to the frequent abuse he made of his authority, betrayed his designs. The eyes of the nation were soon opened, and saw into his projects; when convinced at length, that nothing but fixed irresistible bounds can be an effectual check on the views and efforts of power, they resolved finally to take away these remnants of despotism, which still made a part of the regal prerogative.

Liberty improved under Charles II.

“ The military services due to the crown, the remains of the ancient feudal tenures, had been already abolished; the laws against heretics were now repealed; the statute for holding parliaments once at least in three years was enacted; the *Habeas Corpus* act, that barrier of the subject's personal safety, was established; and such was the patriotism of the parliaments, that it was under a king the most destitute of principle, that liberty received its most efficacious supports.

“ At length, on the death of Charles began a reign, which affords a most exemplary lesson

lessen, both to kings and people; for when the throne was declared vacant, and a new line of succession was established, care was had to repair the breaches, that had been made in the constitution, as well as to prevent new ones; and advantage was taken of the rare opportunity of entering into an original and express compact between king and people.

Advantage of an express compact between king and people at the revolution.

“ An oath was required of the new king more precise, than had been taken by his predecessors; and it was consecrated as a perpetual *formula* of such oaths. It was determined, that to impose taxes without the consent of parliament, as well as to keep up a standing army in time of peace, are contrary to law. The power, which the crown hath constantly claimed, of dispensing with the laws was abolished. It was enacted, that the subject, of whatever rank or degree, had a right to present petitions to the king. Lastly the key-stone was put to the arch by the final establishment of the liberty of the press.

Liberties ascertained or gained at the revolution.

“ The revolution of 1689 is therefore the third grand æra in the history of the constitution of England. The great charter had marked out the limits, within which the royal authority ought to be confined; some out-works were raised in the reign of Edward

The revolution was the completion of our liberty.



the First ; but it was at the revolution, that the circumvallation was completed.

“ It was at this æra, that the true principles of civil society were fully established. By the expulsion of a king, who had violated his oath, the doctrine of resistance, that ultimate resource of an oppressed people, was confirmed beyond a doubt. By the exclusion given to a family hereditarily despotic, it was finally determined, that nations are not the property of kings. The principles of passive obedience, the divine and indefeasible right of kings, in a word, the whole scaffolding of false and superstitious notions, by which the royal authority had till then been supported, fell to the ground, and in the room of it were substituted the more solid and durable foundations of the love of order, and a sense of the necessity of civil government among mankind.”

Exclusive right  
of the commons  
in voting aids,  
&c.

Mr. Acherley says, \* “ That the house of commons, besides their part in the legislature, should be invested with and should have, as *interwoven in their constitution*, these special powers, rights, and privileges, (*viz.*) the sole right and power over the monies and treasures of the people, and of giving and

\* Britannic Constitution, sec. xii. p. 45.

granting,

granting, or denying aids or monies for the public service, and should have the *first* commencement and consideration, and the sole modelling in their house *not only* of all laws for *imposing taxes*, and levying and raising aids or money upon the people for the defence and support of the *state* and *government*; but also of all laws touching the taking from any man his property; and should have power to enquire into, and judge of the uses and occasions, for which monies are to be demanded and given; and to appropriate the same to those uses, and to *inquire* into the applications, and to censure the misapplications thereof; and that this right should be so inviolable, *that neither of the other two estates* should *propound* any thing, nor *interpose*, nor meddle in any of their debates or proceedings, touching these matters; and that these powers and *privileges* should be, and be accounted *hereditary*, and as the most eminent pillars of this constitution; and that the commons in parliament assembled should also have the terrible power of inquiring into grievances, and questioning and impeaching such *malefactors*, as should be found *subverting*, or *endeavouring* to subvert, or advising the subversion or alteration of the *fundamental form* of this government."

Right of the commons to impeach state delinquents.

**Election of the commons must be free.**

As the members of the house of commons are to be freely chosen to represent the free people of England in parliament, so the constitution will not permit the slightest deviation from the principle of free-election, in any one of them. \* “If any part of the representative body be not chosen by the people, that part vitiates and corrupts the whole. If there be a defect in the representation of the people, that power, which alone is equal to the making of laws in this country, is not complete, and the acts of parliament, under that circumstance, are not the acts of a pure and entire legislature. I speak of the theory of our constitution; and whatever difficulties or inconveniencies may attend the practice I am ready to maintain, that as far as the fact deviates from the principle, so far the practice is vicious and corrupt.”

† “It is the ancient indisputable privilege and right of the house of commons, that all grants of subsidies, or parliamentary aids do begin in their house, and are first bestowed by them; although their grants are not effectual to all intents and purposes, until they have the assent of the other two branches of the legislature. The true reason arising

\* Junius, Letter xxxix. p. 207.

† Black. Com. b. i. c. 2. p. 169.

from the spirit of our constitution seems to be this: the lords being a permanent hereditary body created at pleasure by the king, supposed more liable to be influenced by the crown, and when once influenced to continue so, than the commons, who are a temporary elective body, freely nominated by the people, it would therefore be extremely dangerous to give the lords any power of framing new taxes for the subject; it is sufficient, that they have a power of rejecting, if they think the commons too lavish or improvident in their grants. But so reasonably jealous are the commons of this valuable privilege, that herein they will not suffer the other house to exert any power, but that of rejecting; they will not permit the least alteration or amendment to be made by the lords to the mode of taxing the people by a money bill; under which appellation are included all bills, by which money is directed to be raised upon the subject, for any purpose, or in any shape whatsoever, either for the exigences of government, and collected from the kingdom in general, as the land tax; or for private benefit, and collected in any particular district, as by turnpikes, parish rates, and the like.

Why money bills must originate in the house of commons.

Who will not permit them to be altered by the lords.

In the election of commons, consists the exercise of the democratic part of the constitution.

“ In the elections of knights, citizens, and burgessees consists the exercise of the democratical part of our constitution ; for in a democracy there can be no exercise of sovereignty but by suffrage, which is the declaration of the people’s will : in all democracies therefore it is of the utmost importance to regulate by whom, and in what manner the suffrages are to be given. And the Athenians were so justly jealous of this prerogative, that a stranger, who interfered in the assemblies of the people, was punished by their laws with death ; because such a man was esteemed guilty of high treason, by usurping those rights of sovereignty, to which he had no title. In England, where the people do not debate in a collective body, but by representation, the exercise of this sovereignty consists in the choice of representatives. The laws have therefore very strictly guarded against usurpation or abuse of this power, by many salutary provisions, which may be reduced to these three points : 1. The qualifications of the electors ; 2. The qualifications of the elected ; 3. The proceedings at elections.”

It may not be improper to preface the consideration of these three points with some observations

observations upon the general complaint of the malcontents of the day, against the present representation of the people in parliament, which they most loudly reprobate, as *partial, inadequate, and corrupt*.

The principle of our constitution undoubtedly is, that the representation of the people shall be full, free, and unbiassed; and as far as the nature of circumstances will allow, it has from time to time enforced and supported this principle by the wisest rules, orders, and regulations. If at present they do not chuse, or think it expedient and adviseable, to make or introduce any changes or alterations into the parliamentary representation of the people, it must be attributed to a very laudable and *constitutional* aversion from innovating upon the declaration and settlement of our rights at the revolution. Such an event is never more likely to happen in this country; it was a temporary dissolution of the government, effected not by the act of the people or governed, but by that of the crown or governor, which therefore afforded an unprecedented opportunity to the people of recurring to their primeval rights of modelling and squaring that form of government, by which they chose in fu-

ture

Constitutional delicacy in altering the mode of electing representatives.

The opportunity our ancestors enjoyed of altering whatever they found defective in the representation.

Persons living  
at the revolution  
especially  
qualified to  
judge of civil  
liberty.

ture to be ruled and governed. The field was then open to redress every past grievance, and to introduce whatever innovation they thought requisite or conducive to the full enjoyment of their rights and liberties. The minds of the generation then living were perhaps better formed for judging of the effects of civil liberty, than any preceding or subsequent generation whatever. The subversion of monarchy by the death of king Charles I.; the experience of republicanism in the protectorate; the revival of monarchy in the restoration of king Charles II. under fresh conditions and limitations of the royal prerogative, after the nation had been gorged and surfeited with the tyrannical licentiousness of democracy; the abandonment, dereliction, resignation, abdication, or forfeiture of the regal trust and executive power of government by king James II. were facts so recent, that their combined force would then, if ever, work their full impression upon the minds of those who had experienced the whole variety of these changes. Thus the bishop of Worcester introduces serjeant Maynard, conversing with Mr. Somers and bishop Burnet, immediately after the coronation of king William

William and queen Mary, on the 11th of April 1689; \* “ Bear with me, said he, my young friends. Age, you know, hath its privilege; and it may be, I use it somewhat unreasonably. But I, who have seen the prize of liberty contending for through half a century, to find it obtained at last by a method so sure, and yet so unexpected, do you think it possible, that I should contain myself on such an occasion? Oh, if ye had lived with me in those days, when such mighty struggles were made for public freedom, when so many wise councils miscarried, and so many generous enterprizes concluded but in the confirmation of lawless tyranny; if I say, ye had lived in those days, and now at length were able to contrast with me, to the tragedies that were then acted, this safe, this bloodless, this complete deliverance, I am mistaken, if the youngest of you could reprove me for this joy, which makes me think I can never say enough on so delightful a subject.”

The result of these impressions upon our ancestors, who framed the bill of rights and who new modelled the succession and tenure of the crown, was to readopt as much of the old form of government, as was con-

Our ancestors wisely preserved what they could of the ancient form of government.

\* Hurd's Dial. Moral and Political, vol. ii. p. 94, 95.



sistent with that perfection of liberty, which they then meant to establish and transmit, as the most valuable inheritance to their posterity for ever ; most wisely keeping in view that seasonable and just adage of Tacitus, *Arcanum novi statûs, imago antiqui* : “ the secret of setting up a new government, is to retain the figure (or form) of the old one.” Hence I think no one will deny, that a firm acquiescence in that form of government established at the revolution, and a strong reluctance to break in upon it by any sort of innovation are not only laudable, but even constitutional. We have nevertheless seen, as occasions have required, very salutary and beneficial regulations made by parliament since that time, to check, moderate, and ascertain the rights, privileges, and prerogatives of each separate branch of the legislature. And we look up to parliament in full confidence, that they will, in the same spirit of patriotism, continue for ever to prune luxuriances, supply defects, and correct abuses, as in the frailty of all human institutions they may be found to arise.

Though the public be in the habit of respecting and revering the innovations made in the constitution at the revolution, as sacred and immutable, yet if degrees of deference

are

Parliament has altered, and will alter what they think proper.

are admissible for different parts of our constitution, the deference for such parts of it, as our ancestors retained or revived, ought to be more operative upon their posterity, than for the innovations, which they then thought proper to introduce; for though these latter may have been founded upon very plausible and very solid grounds, they essentially wanted the sanctioning judgment of experience; whereas the former super-added the express approbation and confirmation of the same judges, to the long tried experience of many centuries. Of both of these, the Reverend Mr. Paley speaks truly, \* " These points are wont to be approached with a kind of awe; they are represented to the minds as principles of the constitution, settled by our ancestors, and being settled, to be no more committed to innovation or debate; as foundations never to be stirred; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity, by virtue of a promise, which he cannot now recall. Such reasons have no place in our system; to us, if there be any good reason for treating these with

The old forms of our government more respectable than the new.

\* Mr. Paley's Principles of Moral and Political Philosophy, p. 426, as quoted by Dr. Priestley, in his Fourth Letter to Mr. Burke, p. 42.

Frequent  
changes of go-  
vernment to be  
avoided.

more deference and respect than other laws, it is either the advantage of the present constitution of government (which reason must be of different force in different countries) or, because in all countries, it is of importance, that the form and usage of governing be acknowledged and understood, as well by the governors as the governed, and because the seldomer it is changed, the more it will be respected by both sides."

The practice of every human institution must essentially be less perfect, than the theory of it. And daily experience shews, how much more easy it is to invent objections, and start difficulties, than to administer relief, and cure evils. There can be but two general grounds, upon which the discontented declaimers of the day complain of the inadequate, partial, and corrupt representation of this nation in parliament; either that we have swerved from the original usages and institutions of our ancestors, or that the system of representation has never as yet been brought to that degree of perfection, to which their speculative ideas have carried it. This latter ground of complaint will be softened in proportion as the progressive improvements of our constitution shall be traced from the times and circumstances,

The present  
system of re-  
presentation  
comparatively  
complete.

stances, which created the expediency, or called forth the necessity of making them. If the present system of representation be compared with the practices and usages in chusing and returning members of parliament, from the first traces of a national convention, even down to the last century, it will appear to be a system of the most complete liberty and freedom.

I have before shewn, that the persons summoned to the ancient Saxon *wittenagemotes* partook rather more of the nature of our present peers, than of our present members of the house of commons. But in order to reconcile our minds more to the present system, or state of representation in parliament, we should coolly and impartially compare the customs, usages, and forms of chusing and returning the representatives or delegates of the nation to parliament, in the days of our ancestors, even with the most barefaced venality or systematic corruption of some modern boroughs; and we shall necessarily conclude, that the freedom, with which the nation now returns their delegates or trustees to parliament, will bear no degree of comparison with the ancient modes and usages of electing the representatives of the commons in parliament.

In

Different summons to the peers and to the commoners.

In the first place, the very commission, or purpose of the delegation of the commoners, was formerly widely different from what it now is. \* “ When the commons were regularly called to parliament by Edw. I. the summons to them was only *ad audiendum, & faciendum, & consentiendum*; whereas the summons to bishops and barons was, *de arduis negotiis regni tractaturi & consilium impensuri*. The commons were not consulted in state affairs, about peace or war, or making of laws; their business being only to consent to laws made by the kings and barons, and to consent to aids and subsidies, and such like, *ad habendum commune consilium regni de auxiliis assidendis*. The first part of the writ to the commons is to consent to such ordinances as the peers shall make; the next part of the writ is to hear and do what the king shall further require of them; this is the substance of the ancient writs.” So that † “ the balance and measure of power in the government was in Edward the First’s time in the king, church, and nobility, to the propor-

\* Gurdon, vol. i. p. 211. who quotes, parl. Antiq. 24. 84. Parl. Sum. 7. 4 Instit. 10. Parl. Sum. Preface. Rel. Spelm. 64. Filmer, 127. 136. Journal, 18. James, 195.

† Gurdon, vol. ii. 278.

tion of above two thirds of the landed interest, and not one-third in the commons, down to Henry the Seventh's time. The strength and power of the nation before lay in the aristocratical part." For even in the very same century it appears, that the commons had no part nor share in passing that law, which confirmed or acknowledged their own rights and liberties. For in the great charter of king John it is said, \* "*Imprimis concessisse Deo & hac presenti chartâ nostrâ confirmasse pro nobis & heredibus in perpetuum, &c.* And, *ista sunt capitula, quæ barones petunt & dominus rex concedit, signata sigillo Johannis regis.* From which it appears, that the commons, or democratical part of the nation, had no part nor share in passing this famous charter. And in more ancient times, the lords of the great seignories were properly the only constituent members of the parliaments, or national conventions of those days. † "The lowest degree of members of the *Confessor's* parliament were such, as had knights dependent on them in their *friburgh, foke, or seignory*, and these great men represented themselves, and also the

The commons had anciently no share in passing laws.

\* Wilkins, 356, 367. Brady's Appendix, 126.  
Tit. Hon. 702.

† Gurdon, vol. i. 210.

knights and freemen of their feignories. The *theaw*, or under *thane*, that was a dependant upon the great *thane*, was not a member of the *Saxon* parliament, being represented there by his chief, his *thane*; as the *Norman* vavafor or knight, that held of a great baron in mean tenure, was not a member of the *Norman* parliament, he being represented there by his great baron, of whom he held." The original right of representation therefore arose out of the actual possession of property, and not from any consent, vote, or election of the individuals of the community.

The progressive  
consequence of  
the commoners.

It is curious to observe and attend to the progression of consequence and importance, which the commoners acquired in the state.

\* "In the seventeenth of king *John*, A. D. 1215, the barons obtained a confirmation of ancient liberties, and new privileges, and for the more firm establishing them, it was conceded by the king, that the barons should choose twenty-five of their own body to have power over all judges, justices, and ministers, to see the great charters observed; but as yet no

\* Gardon, vol. i. 214. who quotes Rel. Spel. 63. 64. Brady, 617. Rot. Paten. 42 H. III. Somner's Dictionary, voce Unnan. Parlm. Sum. 3. Brady, 642. Parl. Sum. 7.

Representatives of the generality of the commons in parliament.

“ By king *John*’s charter the great barons were to have particular summons, and the rest of the tenants *in capite* were to be summoned in general by the sheriffs ; so many small tenancies being made by king *Stephen* and king *John*, that the tenants *in capite* made the parliament too tumultuous and numerous, wherefore the sheriffs returned proxies for them, but not for the freeholders in general ; for such as held freely of the great barons were by them represented, they taking care of their tenants interest in parliament. The common people were represented in parliament by their chief lords, of whom they held.

Formerly the people represented by the lords.

“ In the thirty-second of *Henry III.* anno Dom. 1258, in the parliament of *Oxford* it was agreed, that twelve persons should be chosen to represent the commons in parliament ; but those elected were bishops, great barons, and tenants *in capite*, as were the patrons of the *Roman plebeians* chosen out of the *patricians*. These representatives of the commons were chosen by virtue of the constitutions of *Oxford*, which both king and barons swore to observe ; but these constitutions were soon dropt.

“ This king in consideration of subsidies

F f

made



made frequent concessions to his barons and people, which were not very lasting in his unsettled reign.

“ In the forty-third year of his reign, he sent a charter to each county of *England*, publishing his resolution to take the advice of his parliament, and in the charter expresses, who were to be the members thereof. The charter is writ in the *Norman Saxon* dialect and character, translated into *Latin* by *Mr. Somner*; so much of it, as relates to my subject, is in these words, viz. *vobis omnibus notum facimus, quod volumus & concedimus, ut quod consiliarii nostri omnes, sive major pars eorum, qui fuerint electi à nobis & gentis plebe, &c.*

Who were chosen by the king, and who by the people.

Sheriffs powers in returning members to parliament.

“ Those members of parliament, that were included in the words, *electi à nobis*, were the great barons, that had particular letters of summons directed to each one of them; those meant by *electi à gentis plebe*, were such as were returned by the sheriffs, which were the lesser tenants *in capite*. In those early days there was a great power in the sheriffs the king's officers, in returning the king's tenants; they were to return all, but many got themselves excused by agreement amongst themselves and the sheriffs; those, that went were the *electi à gentis plebe*.

“ And

“ And the sheriffs were afterwards very partial in returning burgesſes for boroughs, they returning burgesſes for ſuch boroughs, as they pleaſed, and omitting others, till acts of parliament were made to direct and regulate their proceedings. Their partiality in doing it.

*Henry III.* being under great difficulties with his barons and great men, in the forty-ninth year of his reign ſubmitted to have a parliament called in ſuch manner, as the barons directed; and *Simon Montford*, earl of *Leiceſter*, being the head of the confederate barons, that parliament was generally called *Montford's* parliament.

“ In this parliament of the forty-ninth of the king, he ſent writs to the biſhops, abbots, priors, earls and great barons particularly, and to the ſheriffs of the ſeveral counties, to return two knights for each county, two citizens for each city, and two burgesſes for each borough. And this was the firſt parliament of lords ſpiritual and temporal, knights, citizens, and burgesſes, when the king was in the hands of *Montford*. Montford's parliament the firſt regular convention of lords and commons.

“ After the defeat of *Simon Montford* and the barons at the battle of *Eveſham*, the king's affairs took a turn to his advantage, and to the reſt of the parliaments of his reign he ſummoned none but lords ſpiritual and tem-

From the 23d Ed. I. knights, citizens, and burgeses regularly summoned.

Discretionary power in the sheriffs to make returns.

poral, and tenants *in capite*, wholly dropping knights, citizens, and burgeses; and so they were in Edward I.'s reign, till in his eighteenth year he summoned knights, citizens, and burgeses, and in his twenty-third year, and always afterwards."

About the time of Hen. III. and subsequent reigns, the returns for boroughs were almost discretionary in the breasts of the sheriffs. In fact they seldom made returns for all the boroughs within their bailiwicks.

\* The writs did not particularly name the boroughs, that were to send burgeses, but were general, viz. *de qualibet civitate duos cives, & de quolibet burgo duos burgenses, &c. eligi facias.* † "The form of the returns annexed to the ancient writs indicates something of a discretionary power in the sheriff, who after the names of the knights, citizens, and burgeses, concludes thus: *non sunt plures civitates vel burgi in balivâ meâ*, though there were more boroughs there; and sometimes the return concluded in these words, viz. *et non sunt aliæ civitates seu burgi infra comitatum, de quibus aliqui cives, seu burgenses, ad dictum parliamentum venire debent seu solent propter eorum debilitatem seu paupertatem.*"

\* Brad. Burg. 52—55.

† Gurdon, vol. i. p. 235.

\* “ The sheriffs frequently left out of their returns small inconsiderable boroughs, that were poor and not in condition to pay their burgeses their wages, or such as had not residents qualified for service in parliament; and such omission was according to the favour boroughs could obtain from the sheriffs.

“ The great number of boroughs in Cornwall, and the adjacent western counties is owing to the favour of the old earls of Cornwall and Devonshire, men of great power and demeanour, the earls of Cornwall being all of them related to the kings of England; and De Rivers, De Fortibus, and Courtney, earls of Devon, great and powerful men, who made many of their towns boroughs.”

Now if we reflect upon the overbearing and uncontrollable power of the great and opulent in those days, it will be fair to conclude, that in proportion as the aristocratic influence was at that time more prevalent than at present, so were the electors of these boroughs more servilely devoted to the dictates of their lords. And formerly when burgeses were sent to parliament, their duties were looked upon to be very different from the duties of

Boroughs multiplied by the lords to whom they belonged.

\* Gurdon on Parliament, vol. i. p. 236.

our present members of the house of commons, whence it is evident beyond question, that the nation and its interests are more completely represented and attended to at present, than they formerly were.

The commons were not formerly interested about state affairs.

\* “ It was formerly counted to be a fundamental error in our parliamentary constitution, that the citizens and burgesses of the house of commons so much out-number the knights of shires, who represent the landed interest, which was so enlarged in *Henry VII.* and *Henry VIII.*’s time, as for the commons to overbalance in property both king, church, and lords. The greatest part of the citizens and burgesses before *Henry VII.*’s time were esteemed very good members of the commons, if they were so sagacious, as to move something in the house, that might tend to the advancement of the trade of the city or borough they represented, as the maritime boroughs, shipping, navigation, and foreign commerce; the *Suffolk* boroughs, the interest of the clothing trade; the citizens of *Norwich* that of worsted *stuffs*; the *Cornish* boroughs, that of the stannaries; and it was not looked upon as any part of their business in parliament to search into the *ARCANA imperii*,

\* Gurdon on Parliament, vol. ii. p. 354.

that

that being in all ancient times, and so late as *Henry VII.*'s time looked upon to be the province of the king and lords, for at that time citizens and burgesses were resident of cities and boroughs, and not country gentlemen of great landed interest.

“ In *Henry VII.*'s time and *Henry VIII.*'s ministers of state, officers of the revenue, and other courtiers, found an account in creeping through boroughs into the house of commons, and to make room for them, the boroughs from one hundred and twenty-six (the number in the latter end of *Henry VIII.*'s time) is near doubled, by reviving dormant rights and privileges claimed by ancient boroughs after they had been obsolete for some centuries.”

The members for many ancient boroughs were both chosen and returned by the lords, and sometimes by the ladies of the manors or boroughs; which was certainly a grosser deviation from the freedom of election, than any usage or custom, under which returns are at this day made for the most corrupt boroughs. \* Thus in the 14th and 18th of queen Eliz. Dame Mary Packington, the

\* Brady. Burg. App. 5.

widow of Sir John Packington, made return of burgesſes in theſe words, viz. “ Know ye, that I Mary Packington, &c. have choſen, named, and appointed my truſty and well-beloved Thomas Lichfield and George Burden, eſqrs. to be my burgesſes for my ſaid borough of Ayleſbury, &c.”

It was anciently the practice for the crown to ſummon *pro re natâ*, the moſt flouriſhing towns to ſend representatives to parliament; but this diſcretionary prerogative of the crown has been long ſince diſuſed. As ſome towns however formerly encreaſed in trade and grew populous, they were admitted to the right of ſending deputies or representatives to parliament; thus the number of the houſe of commons encreaſed, as I have already ſpecified; but the deſerted boroughs continued the privilege or right of ſending members to parliament, though ſome of them finding it burthenſome to maintain their members, as was the uſage of thoſe days, by their own petition were eaſed of the expence, and at the ſame time loſt their right of ſending representatives or members to parliament. For various reaſons the number of the houſe of commons has been encreaſed from three hundred, about which number it was ſuppoſed

Some boroughs loſt their privilege of ſending members to parliament.

posed to be in Fortescue's time\*, to more than five hundred, exclusive of the members of Scotland. From the change in the poli-

\* Fort. de Laud. Reg. Ang. c. xviii. p. 35. This great man says, "The statutes of England are produced quite in another manner, not enacted by the sole will of the prince, but with the concurrent consent of the whole kingdom by their representatives in parliament. So that it is morally impossible, but that they are and must be calculated for the good of the people, and they must needs be full of wisdom and prudence, since they are the result not of one man's wisdom only, or an hundred, but such an assembly as the Roman senate was of old, more than three hundred select persons." Under correction, I beg leave to suggest, that Judge Blakiston and most other writers upon the rights of the commons, as Prynne, Petit, Selden, &c. have mistaken and misrepresented this passage of Fortescue; the error may have proceeded from attending to the English version of this respectable author, which I have copied above. The bare statement of the original words, *dum nedum principis voluntate, sed & totius regni assensu ipsa conduntur*, will, I think, sufficiently prove, that in mentioning the number three hundred, he included the lords *spiritual* and *temporal*, as well as the commons, without whose consent no act of parliament could then pass, any more than at present. His assimilation of them also to the Roman senators, who were not the chosen delegates or representatives of the people, strengthens my suggestion; and the assertion of Mr. Gurdon, that learned investigator of the old parliamentary institutions, that the number of the house of commons was but one hundred and twenty-six at the latter end of Hen. VIII.'s reign, seems to place the matter out of all doubt.



Whence the  
idea of property  
in boroughs.

cy, manners, and customs of the kingdom, the right or duty of sending representatives to parliament is no longer felt as a grievance or hardship, but valued as an inestimable right, liberty, and benefit; and the appraisement of its value is now settled by the paucity of the voters, in whom the right of election for the borough is vested. Hence arose the idea of property in boroughs; for where the right of election remained by the decay or decrease of population in the borough vested in few individuals, it often happened, that these few voters were tenants or dependents of some wealthy or powerful man of property in the neighbourhood. The influence and power of the opulent over their tenants and dependents, or, as they formerly often were their vassals, feudatories, or bondsmen, were in ancient times very different from what they now are. At present I do not conceive a possible case, in which, if the right of voting for a borough were vested but in one single individual, how that individual should be constrained or obliged to give his vote for one person in preference to another. In proportion to the certainty, with which a small number of electors could return the member they chose, was this ideal borough-right supposed to be vested either in the electing individuals of the borough, or in those, who  
had

had an interest in or influence over the electors.

In process of time, this certainty of returning their own man came to be looked upon as a species of property, and as that idea gained ground, so did the legislature become tender of invading it, upon the true constitutional principle of holding and preserving all private property sacred and inviolable. There could not in reality be a grosser violation of the freedom of election, than to prevent the electors from chusing those, whom benevolence, affection, and gratitude should suggest or point out as the most agreeable persons to represent them in parliament. Upon the presumptive force of such motives are individuals very frequently, though very improperly, said to command the votes of a borough; for no physical nor moral, much less any *legal* or *constitutional* restraint or obligation of voting for a particular person, can by possibility exist; and our acts of parliament have gone almost to the utmost extent of human jurisdiction, in order to obviate and prevent the effects of any undue influence, bribery, and corruption upon the electors.

Persons improperly said to command the votes of a borough.

It is truly wonderful to consider the delicate, and at the same time effectual remedy, which our admirable constitution applies to  
this

The constitutional remedy against the inadequacy of representation.

this real or apparent evil. As the nation grew more populous, more opulent, and consequently as individuals grew more intriguing and ambitious, the effects of popular elections became more hurtful to the sobriety, peace, and industry of the community; the multiplication of such elections was an evident extension of the evil already felt and complained of; now if it be considered, that the number of representatives in parliament has been more than doubled since Sir John Fortescue rested our security for none but good laws being enacted upon the number of the members of parliament, who *consented to them on behalf* of the community, and that the population of *the kingdom is certainly not proportionably increased* since that time, it will be reasonable to infer, that as, including peers, there are about eight hundred members of parliament *quorum assensu* the statutes are now formed, there can be no deviation from the ancient constitutional intention and spirit of parliaments, unless the increase of the numerical proportion of the representatives to the represented shall be thought a violation or abuse of the constitution. In order therefore to do away every idea of unequal representation between two boroughs very unequal in population and opulence,

lence, from the moment of the return of their respective members one becomes as much as the other a representative for the whole people or community of Great Britain.

\* “ Every member, though chosen by one particular district, when elected and returned serves for the whole realm; for the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *commonwealth*; to advise his majesty (as appears from the writ of summons) *de comuni consilio super negotiis quibusdam arduis et urgentibus, regem, statum, et defensionem regni Angliæ et ecclesiæ Anglicanæ concernentibus*; and therefore he is not bound, like a deputy in the United Provinces, to consult with or take the advice of his constituents upon any particular point, unless he himself thinks it proper or prudent so to do.” Upon this principle therefore it must be allowed, that eight millions of individuals (supposing this to be the population of England) are more fully represented by eight hundred † than

The duties of the representatives when once returned.

\* Blak. Com. b. i. c. 2.

† Some people doubt whether the actual population of the kingdom be at all increased since that time; it certainly is not increased in the proportion of eight to three.

by three hundred representatives, or persons consenting to the acts of the legislature.

The source and effect of bribery.

It is certain, that the practice of every human institution must in some degree fall short of the perfection of its theory; bribery and corruption are old hacknied themes of popular declamation, and it will ever increase and be louder in proportion to the disappointment, envy, and malice of the discontented party. Less vociferous and less frequent would be the complaints against bribery, if the complainants did but recollect, that the root of the evil lay less in the offer, than in the acceptance of the bribe. It argues more corruption and depravity in a district, to find a hundred men ready to sacrifice their freedom and integrity for a trifling bribe, than to find one man impelled by his ambition to offer it. No punishment can be too severe upon those, who hold out the bait to the multitude; but until the corrupt disposition of electors be rectified, they will take care to render ineffectual the most vigilant and rigorous laws against the bribing offers of the *electeds*. Ill therefore does it become those to complain of encroachments upon the constitutional freedom of elections, whose voluntary and reflexed corruption completes the  
guilt

guilt of the act, by which the constitution is so severely wounded. I wish not to extenuate the guilt of bribery, nor shall I endeavour to justify any design or attempt to deprive a voter of the freedom of his choice; but as the evil is absolutely effected by the elector, who under every circumstance of influence, fear, hope, or temptation, actually retains the freedom of his action, and therefore of his election, I must necessarily conclude, that the only effectual prevention of the evil will be the correction of the corrupt disposition of the electors; without this, every attempt or exertion of the magistrate will be futile and ineffectual.

It is not my intention to enter into the minute and particular qualifications of each elector for a representative in parliament; suffice it to say, that the constitution supposes him to be so independent in life, as not to be under the bias, controul, or influence of any one; therefore every elector for the knight of the shire must have *bond fide* freehold lands in the shire at least of the annual value of 40s. which at the time of Hen. VI. when this qualification was first required, was equivalent to 20l. in the present reduced value of money. By not accommodating this qualification to the present value of money, the constitution very much enlarges the rights of electors beyond

Qualifications  
of electors.

yond the original intention. Almost every city and borough has its peculiar qualification for voting. Every voter must be of full age, a natural-born subject, and *rectus in curia*.

Qualifications  
of the elected.

These three last qualifications are also required in every person to be elected. No clergyman, judge, nor sheriff can be elected; nor indeed, generally speaking, can any person be elected, who holds a place or pension under the crown, by which the freedom of his conduct may be supposed to be biased. And if any member of parliament accepts an office under the crown, he thereby vacates his seat, and must return to his constituents, if he wish to be re-elected, that they may have the liberty of rejecting him, if they think, that the acceptance of such office will affect the freedom of his parliamentary conduct. A knight of the shire must have a qualification of 600l. per ann. *bona fide* freehold landed property; and every citizen and burghers at least 300l. per ann. of like *bona fide* freehold landed property.

Means of pre-  
serving the free-  
dom of the elec-  
tors.

The great and constant attention, which the constitution shews to the freedom of elections appears through every stage of the process. After issuing the writs for choosing the members, every precaution is taken, that human foresight can suggest, to remove even the

the possibility of any undue influence over the freedom of the electors; all soldiers are removed from the place of election; the interference of peers and certain officers of the crown is most strictly prohibited; the offer or promise of any money, entertainment, profit, promotion, or advantage, in order to the election induces the inability to be elected; and passive and active bribery is punished with the heaviest forfeitures and disabilities.

\* “Undue influence being thus (I wish the depravity of mankind would permit me to say effectually) guarded against, the election is to be proceeded to on the day appointed; the sheriff or other returning officer first taking an oath against bribery, and for the due execution of his office. The candidates likewise, if required, must swear to their qualification, and the electors in counties to theirs; and the electors both in counties and boroughs are also compellable to take the oath of abjuration and that against bribery and corruption. And it might not be amiss if the members elected were bound to take the latter oath, as well as the former; which in all probability would be much more effectual, than administering it only to the electors.”—

\* Black. Com. b. i. c. 2.



I will close this subject with the words of an author who has taken much pains to collect the rights and duties of the house of commons.

Constitutional  
freedom of the  
house of com-  
mons.

\* “There is nothing ought to be so dear to the commons of *Great Britain* as a free parliament; that is, a *house of commons* every way free and independent either of the lords or ministry, &c. *free* in their persons; *free* in their estates; *free* in their elections; *free* in their returns; *free* in their assembling; *free* in their speeches, debates, and determinations; *free* to complain of offenders; *free* in their prosecutions for offences; and therein *free* from the fear and influence of others, how great soever; *free* to guard against the incroachments of arbitrary power; *free* to preserve the liberties and properties of the subject; and yet *free* to part with a share of those properties, when necessary, for the service of the public; nor can he be justly esteemed a representative of the people of *Britain*, who does not sincerely endeavour to defend their just rights and liberties against all invasions whatsoever.”

\* Appendix to *Lex Parliamentaria*, p. 433.

## CHAP. XV.

## OF THE COLLECTIVE LEGISLATIVE BODY.

I Shall now present my readers with a general outline of the nature, laws, and customs of parliament, united together in one aggregate body.

\* “The power and jurisdiction of parliament,” says Sir Edward Coke, “is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. And of this high court he adds, it may be truly said, ‘*Si antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima.*’ It hath sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, † ecclesiastical or temporal, civil, military, maritime, or criminal; this being the place, where that absolute despotic power, which must in all governments reside

Power and jurisdiction of parliament.

\* Black. Com. b. i. c. 2. c. 160.

† i. e. concerning the civil Establishment of Religion, not upon the doctrine or points of revelation.

somewhere, is entrusted by the constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new model the succession to the crown; as was done in the reign of Henry VIII. and William III. It can alter the established religion of the land; \* as was done in a variety of instances, in the reigns of king Henry VIII. and his three children. It can change and create afresh even the constitution of the kingdom, and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can in short do every thing, that is not naturally impossible; and therefore some have not scrupled to call its power by a figure rather too bold, the omnipotence of parliament. True it is, that what the parliament doth, no authority upon earth can undo. So that it is a matter most essential to the liberties of this kingdom, that such members be delegated to this important trust, as are most eminent for their probity, their fortitude, and their knowledge.

Omnipotence  
of parliament.

\* *i. e.* the civil Establishment of it.

In

In order to prevent the mischiefs, that might arise by placing this extensive authority in hands, that are either incapable, or else improper to manage it, it is provided by the custom and law of parliament, that no one shall sit or vote in either house, unless he be twenty-one years of age. This is also expressly declared by statute 7 & 8 W. III. c. 25, with regard to the house of commons; doubts having arisen from some contradictory adjudications, whether or no a minor was incapacitated from sitting in that house. It is also enacted by statute 7 Jac. I. c. 6. that no member be permitted to enter the house of commons, till he hath taken the oath of allegiance before the lord steward, or his deputy; and by 30 Car. II. st. 2. and 1 Geo. I. c. 13, that no member shall vote or sit in either house, till he hath, in the presence of the house, taken the oaths of allegiance, supremacy, and abjuration, and subscribed, and repeated the declaration against transubstantiation, and invocation of saints, and the sacrifice of the mass. Aliens, unless naturalized, were likewise by the law of parliament incapable to serve therein; and now it is enacted, by statute 12 & 13 W. III. c. 2. that no alien, even though he be naturalized, shall be capable of being a member of either house of parliament. And there are not only

No minors to sit in either house.

Oaths required to qualify the members to take their seats.

Exclusion of aliens.

Criminals adjudged by the two houses incapable to sit.

these standing incapacities ; but if any person is made a peer by the king, or elected to serve in the house of commons by the people, yet may the respective houses, upon complaint of any crime in such person, and proof thereof, adjudge him disabled and incapable to sit as a member ; and this by the law and custom of parliament.

*Lex & consuetudo  
parliamenti.*

The high court of parliament hath its own peculiar law, called the *lex et consuetudo parliamenti* ; a law, which Sir Edward Coke observes, is “ *ab omnibus querenda, a multis ignorata, a paucis cognita.*” It will not, therefore, be expected that we should enter into the examination of this law, with any degree of minuteness ; since, as the same learned author assures us, it is much better to be learned out of the rolls of parliament, and other records, and by precedents, and continual experience, than can be expressed by any one man. It will be sufficient to observe, that the whole of the law and custom of parliament has its original from this one maxim ; “ That whatever matter arises concerning either house of parliament, ought to be examined, discussed, and adjudged in that house, to which it relates, and not elsewhere.” Hence for instance, the lords will not suffer the commons to interfere in settling

Each house judge of their own causes.

the

the election of a peer of Scotland ; the commons will not allow the lords to judge of the election of a burges ; nor will either house permit the subordinate courts of law to examine the merits of either case. But the maxims upon which they proceed, together with the method of proceeding, rest entirely in the breast of the parliament itself ; and are not defined and ascertained by any particular stated laws.

No limited  
form nor proofs  
in parliament

The *privileges* of parliament are likewise very large and indefinite. And therefore when in 31 Henry VI. the house of lords propounded a question to the judges concerning them, the chief justice Sir John Fortescue, in the name of his brethren declared, “ that they ought not to make answer to that question ; for it hath not been used aforetime, that the justices should in anywise determine the privileges of the high court of parliament. For it is so high and mighty in its nature, that it may make law ; and that, which is law, it may make no law ; and the determination and knowledge of that privilege belongs to the lords of parliament, and not to the justices.” Privilege of parliament was principally established, in order to protect its members, not only from being molested by their fellow-subjects, but also

Privileges of  
parliament in-  
definite.

Reasons for  
their being in-  
definite.

more

more especially from being oppressed by the power of the crown. If, therefore, all the privileges of parliament were once to be set down and ascertained, and no privilege to be allowed, but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of parliament. The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite. Some however of the more notorious privileges of the members of either house are privilege of speech, of person, of their domestics, and of their lands and goods. As to the first, privilege of speech, it is declared by the statute 1 W. and M. ft. 2. c. 2. as one of the liberties of the people, "that the freedom of speech, and debates, and proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament." And this freedom of speech is particularly demanded of the king in person, by the speaker of the house of commons, at the opening of every new parliament. So likewise are the other privileges of persons, servants, lands and goods; which are immunities as ancient, as Edward the

the

Privilege of  
speech.

the confessor ; in whose laws we find this precept, ‘ *Ad synodos venientibus five summoniti sint, five per se quid agendum habuerint, sit summa pax :*’ and so too, in the old Gothic constitutions, ‘ *extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu.*’ This includes not only privilege from illegal violence, but also from legal arrests, and seizures by process from the courts of law. To assault by violence a member of either house, or his menial servants, is a high contempt of parliament, and there punished with the utmost severity. It has likewise peculiar penalties annexed to it in the court of law, by the statutes 5 Henry IV. c. 6. and 11 Henry VI. c. 11. Neither can any member of either house be arrested and taken into custody, nor served with any process of the courts of law; nor can his menial servants be arrested; nor can any entry be made on his lands; nor can his goods be distrained or seized; without a breach of the privilege of parliament.

Privilege of persons.

Privilege of servants, lands, and goods.

“ These privileges however, which derogate from the common law, being only indulged to prevent the member’s being diverted from the public business, endure no longer, than the session of parliament, save only as to the freedom of his person : which in a peer is for ever sacred and inviolable ;  
and



By statutes  
some privileges  
cease after disso-  
lution and pro-  
rogation.

Other abridg-  
ments of the  
privileges of  
parliament.

and in a commoner for forty days after every prorogation, and forty days before the next appointed meeting; which is now in effect as long, as the parliament subsists, it seldom being prorogued for more than fourscore days at a time. As to all other privileges, which obstruct the ordinary course of justice, they cease by the statutes, 12 W. III. c. 3. and 11 Geo. II. c. 24. immediately after the dissolution or prorogation of the parliament, or adjournment of the houses for above a fortnight; and during these recesses a peer, or member of the house of commons may be sued like an ordinary subject, and in consequence of such suits may be dispossessed of his lands and goods. In these cases the king has also his prerogative: he may sue for his debts, though not arrest the person of a member, during the sitting of parliament; and by statute 2 & 3 Ann. c. 18. a member may be sued during the sitting of parliament for any misdemeanor, or breach of trust in a public office. Likewise for the benefit of commerce, it is provided by statute 4 Geo. III. c. 33. that any trader having privilege of parliament, may be served with legal process for any just debt, to the amount of £.100, and unless he make satisfaction within two months, it shall be deemed an act of bankruptcy;

ruptcy; and that commissions of bankrupt may be issued against such privileged traders in like manner, as against any other.

“ The only way, by which courts of justice could anciently take cognizance of privilege of parliament was by writ of privilege, in the nature of a *superfedeas*, to deliver the party out of custody, when arrested in a civil suit. For when a letter was written by the speaker to the judges, to stay proceedings against a privileged person, they rejected it, as contrary to their oath of office. But since the statute 12 W. III. c. 3. which enacts, that no privileged person shall be subject to arrest or imprisonment, it hath been held, that such arrest is irregular *ab initio*, and that the party may be discharged upon motion. It is to be observed, that there is no precedent of any such writ of privilege, but only in civil suits; and that the statute of 1 Jac. I. c. 13. and that of king William, (which remedy some inconveniences arising from privilege of parliament) speak only of civil actions. And therefore the claim of privilege hath been usually guarded with an exception, as to the case of indictable crimes; or, as it hath been frequently expressed, of treason, felony, and breach (or surety) of the peace. Whereby it seems to be understood, that no privilege

How process to be had against members of parliament in civil cases.

How in criminal cases.

Seditious libellers not now privileged.

privilege was allowable to the members, their families, or servants in any *crime* whatsoever; for all crimes are treated by the law as being *contra pacem domini regis*. And instances have not been wanting, wherein privileged persons have been convicted of misdemeanors, and committed, or prosecuted to outlawry, even in the middle of a session; which proceeding has afterwards received the sanction and approbation of parliament. To which may be added, that a few years ago, the case of writing and publishing seditious libels was resolved by both houses not to be intitled to privilege; and that the reasons, upon which that case proceeded, extended equally to every indictable offence. So that the chief, if not the only, privilege of parliament in such cases, seems to be the right of receiving immediate information of the imprisonment or detention of any member with the reason, for which he is detained; a practice, that is daily used upon the slightest military accusations, preparatory to a trial by a court martial; and which is recognized by the several temporary statutes for suspending the *habeas corpus* act, whereby it is provided, that no member of either house shall be detained, till the matter, of which he stands suspected, be first communicated to the house, of which he is a member,

Communication to be made to the house of the detention of its member.

member, and the consent of the said house obtained for his commitment or detaining. But yet the usage has uniformly been ever since the revolution, that the communication has been subsequent to the arrest."

When an act of parliament is once completed, it is \* "the exercise of the highest authority, that this kingdom acknowledges upon earth. It hath power to bind every subject in the land, and the dominions thereunto belonging †; nay, even the king himself, if particularly named therein. And it cannot be altered, amended, dispensed with, suspended, or repealed, but in the same forms, and by the same authority of parliament: for it is a maxim in law, that it requires the same strength to dissolve, as to create an obligation."

Sovereignty of parliament.

Every natural born subject, as a member of this community, has a personal interest in the enjoyment and preservation of the before mentioned rights, liberties, and prerogatives, by his representatives in parliament; for the maintenance and preservation of them will alone maintain and preserve sacred and in-

Our interest to preserve the rights and privileges of parliament.

\* Black. ubi supra. p. 185.

† Since this was written by Judge Blackstone, by the 23 Geo. III. c. 28. a separate and independent legislature has been allowed to the kingdom of Ireland.

violate,

violate, the rights and liberties of all Britons, which are common both to the representatives and represented.

General rights  
of the people of  
England.

I have already endeavoured to shew the general rights, which every man is entitled to, by becoming a member of civil society; those, to which he is entitled as a member of this community, may be called, \* “ in a peculiar and emphatical manner, the rights of the people of England. And these may be reduced to three principal or primary articles; the right of personal security, the right of personal liberty, and the right of private property; because as there is no other known method of compulsion, or of abridging man’s natural free will, but by an infringement or diminution of one or other of these important rights; the preservation of these inviolate may justly be said to include the preservation of our civil immunities, in their largest and most extensive sense.

The right of  
personal security.

“ I. The right of personal security, consists in a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.

Of personal liberty.

“ † II. Next to personal property, the law of England regards, asserts, and preserves

\* Black. Com. b. i. c. 1. p. 129.

† Black. ibidem.

the personal liberty of individuals. This personal liberty consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law."

\* " III. The third absolute right inherent in every Englishman, is that of property; which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution."

Of personal property.

It would exceed my purpose to enumerate in detail all the particular laws, by which these rights and liberties are preserved and protected. Some are by common law, others by statute law: every subject may know, if he please, in what they consist; for they depend not upon the arbitrary will of a judge, but are permanent, fixed, and unchangeable, unless by act of parliament. The constitution, powers, and privileges of parliament, and the limitation of the king's prerogative to certain bounds are the general and fundamental grounds for protecting and maintaining inviolate, our three great and primary rights of personal security, personal liberty,

Certainty of our rights.

\* Black. Com. b. i. c. i. p. 129.

Our courts of  
justice immacu-  
late.

Rights of juries.

Preservation of  
our rights and  
liberties.

and private property. Our immediate and specific security for their preservation, is the free and uninterrupted application to courts of justice, unquestionably the most immaculate, that have ever existed in any known country; and to juries of our peers, whose rights now seem for ever to be unalterably settled upon the true genuine principles of the English constitution \*.

† “ In these several articles consist the rights, or, as they are frequently termed, the liberties of Englishmen; liberties more generally talked of, than thoroughly understood, and yet highly necessary to be perfectly known and considered by every man of rank or property, lest his ignorance of the points, whereon they are founded, shall hurry him into faction and licentiousness on the one hand, or a pusillanimous indifference and criminal submission on the other. And we have seen, that these rights consist primarily in the free enjoyment of personal security, of personal liberty, and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compul-

\* Vid. Mr. Erskine's excellent argument upon the Rights of Juries, in the case of the Dean of St. Asaph, in B. R. throughout.

† Blak. Com. b. i. c. sub. fin.

five tyranny and oppression must act in opposition to one or other of these rights, having no other object, upon which it can possibly be employed. To preserve these from violation it is necessary, that the constitution of parliaments be supported in its full vigour, and limits certainly known be set to the royal prerogative. And lastly, to vindicate these rights, when actually violated or attacked, the subjects of England are entitled in the first place to the regular administration and free course of justice in the courts of law; next to the right of petitioning the king and parliament for redress of grievances; and lastly to the right of having and using arms for self-preservation and defence. And all these rights and liberties it is our birth-right to enjoy entire, unless where the laws of our country have laid them under necessary restraints; restraints in themselves so gentle and moderate, as will appear upon farther enquiry, that no man of sense or probity would wish to see them slackened. For all of us have it in our choice to do every thing, that a good man would desire to do; and are restrained from nothing, but what would be pernicious either to ourselves or our fellow citizens. So that this review of our situation may fully justify the obser-

H h

vation



vation of a learned French author, \* who indeed generally both thought and wrote in the spirit of genuine freedom ; and who hath not scrupled to profess, even in the very bosom of his native country, that the English is the only nation in the world, where political or civil liberty is the direct end of its constitution."

Our duties to  
magistrates,  
and theirs to us.

My object hitherto has chiefly been the investigation and discussion of our civil rights ; but as these rights are in many senses relative in respect to the community at large, and the magistrates appointed by them, so they necessarily involve certain relative duties to them, which it will be my remaining task to consider ; for the whole society collectively, and each member of it individually, have both rights and duties mutual and reciprocal. The rights of the community are the submissive duties of its members ; the rights of the members are the protecting duties of the community.

\* Mont. Spir. of Laws, 9. 5.

## CHAP. XVI.

## OF OFFENCES AGAINST THE STATE.

**I**T may appear singular, that I should attempt to explain and enforce the duties of individuals towards the society, by considering their breach and violation of them. Were this the point, from which I had originally started the subject, I should certainly have pursued another course; but as what has been already offered will I hope satisfy that class of my readers, who admit of the obligation to observe and comply with these duties *virtutis amore*, so I feel it incumbent upon me to throw this obligation into a new light, for the conviction of those, who cannot otherwise than *formidine pænæ* be induced to submit unto it.

Reasons for  
considering  
these offences.

Nothing is more true, than that the basis and whole superstructure of our constitution is formed of true liberty; which consists in the preservation of order for the protection of society, not in the abandoned licentiousness of confusion and anarchy. The liberty of a nation is ever proportioned to the perfection of its government; the perfection of govern-

The liberty of a  
nation propor-  
tioned to the  
energy of its  
government.

Contempt of  
the laws an in-  
jury to the na-  
tion.

ment is known by its energy, and that is nothing more, than the efficacy and facility, with which the executive power can enforce the laws. The laws are the direct emanations of the sovereignty of the whole; the consent of every individual of the community is formally included in each of the laws; and the contempt and violation of them is therefore more probably insulting to the nation, who have made the laws, than to the magistrates, whose duty it is to execute them. The law is the unanimous will of the whole community; for the conclusion of the whole by the act of the majority does away the presumptive possibility of a dissenting individual. In this great truth is engendered the peculiar vigour of our constitution. Because our laws are framed, *totius regni assensu*, as Fortescue observes; therefore is the whole kingdom indispensably bound to the observance of them. From this assent of each individual arises a right and interest, which the community possesses collectively and individually, in the actual performance of the covenant and engagement, which at the passing of every law each individual enters into for the performance and observance of it. Although the government itself is said to be founded in the original compact between the governors and

and governed ; yet the substance of the government depends not only upon the continuation of that original contract, but in this mutual and reciprocal covenant, engagement, or contract of every individual to abide by and enforce his own voluntary act and deed ; for it is a first principle of our constitutional policy, that every law of England is the free, unbiassed, and deliberate act of every Englishman.

Our laws binding upon each individual, because every one assents to their passing.

. It is but to such a political government as ours, that these, I may almost say, metaphysical truths can be applied ; they have no foundation in the first principle of the civil law, *quod principi placuit, legis habet vigorem*. As the will of the prince is not under the controul of the people, they have no participation in the act imposed upon them ; and its coercive obligation can be urged against the people upon no other ground, than that of a servile, timid, or compulsive acquiescence in the arbitrary dictates of an uncontrollable power. The operative coercion and energy of a British act of parliament can never be so clearly seen, as when viewed in antithesis to the despotic mandates of an arbitrary monarch. If we could bring ourselves even to conceive a contract or compact between a people and an absolute despotic sovereign,

This reason applies not to arbitrary governments.

yet as the whole legislative power rests solely in him, it necessarily and essentially precludes the very possibility of any mutual and reciprocal covenant, engagement, or contract of the individuals with each other ; and this is the vivifying sap, that pervades every fibre of our constitution.

*The constitution of England peculiarly adapted to enforce subordination.*

Into what an extravagant error do not they fall, who attempt to justify by the spirit of the English constitution the opposition and resistance of individuals to the establishment of its government? For if there can exist upon earth a government of human institution, that emphatically and essentially condemns and precludes such anomalous efforts of the discontented members of a community to disturb or subvert the establishment of the whole society, it is the constitution of Great Britain. In arbitrary regal governments, where the will of the sovereign makes the law, the aggrieved subject is immediately challenged by the oppressive mandate of his sovereign to protect his own natural rights by personal resistance. There is no intervening lenitive between his judgment and his feelings ; the mental condemnation of an unreasonable command is as quickly succeeded by the impulse to resist it, as the report succeeds the flash of a discharged musket.

quiet. Nothing short of the strictest passive obedience and non-resistance can ensure to an arbitrary sovereign the universal submission of his subjects. In regal governments was this doctrine engendered, fostered, and reared; and when our kings wished or attempted to erect themselves into regal arbitrary sovereigns, they attempted at the same time to transplant it into this country; but the soil and climate of a political government, such as ours happily is, were little congenial with the nature of the plant. In the unnatural heat of excessive prerogative under the Tudors and Stuarts it was forced into a puny exotic shoot, that drooped, withered, and decayed, when exposed to the natural soil and open free air of the English constitution.

*The doctrine of passive obedience and non-resistance can only exist in arbitrary governments.*

Few or none of my readers are ignorant of the fatal effects, which have proceeded from the rancorous differences and disputes upon this doctrine, that formerly divided and disgraced our unhappy country. It has stained with blood and infamy the field, the judicature, the senate, and the church. Of this, as of most other party differences in this country, it may most truly be said, \* "The heat of honest men being once raised, and the cooler

*The fatal effects of attempting to establish these doctrines.*

\* Yorke's Confid. on the Law of Forfeiture, p. 3.

passions

The impossibility of passive obedience and non-resistance in our government.

passions of artful men dissembled by a specious zeal for public good, the calm voice of reason and the law finds no attention ; and persons of less understanding, incited by example, add greatly to the weight of that clamour, which for a time has ever been too strong for argument." Thus if we consider but coolly and impartially what is and ever was the real doctrine of passive obedience and non-resistance, we shall find, that it could never by possibility have been applicable to, or practicable in the English government, for in the political form of our government, no king could ever issue commands, nor demand obedience in anything, which exceeded or contradicted the law of the land. \* " The consequences of such a frame of government are obvious. That the *laws* are the rule to both, the common measure of the power of the crown, and of the obedience of the subject." The constitution can know no obedience, where there is no power to command ; but there is no power given by our constitution to the king to command beyond the law ; and therefore the constitution can never have had in contemplation such passive

\* Mr. Lechmere's first Speech in Dr. Sacheverel's Trial.

obedience of the subject in that, which is not law. The same line, which circumscribes and confines the power of the crown, marks the extent of the subjects obedience. The very use and admission of the term *subject* is a metaphysical demonstration, that the doctrine is wholly inapplicable to the state of a limited monarchy, such as that of England confessedly is. *Subject* and *sovereign* are correlatives; the one cannot exist without the other. In the English constitution the power of the sovereign or king is confined or limited to that of the law; beyond this limitation the very relation ceases; consequently, where there is no *king* nor *sovereign*, there the passive obedience and non-resistance of the *subject* to him is out of the question, as is self-evident.

In a limited monarchy the power of the king and the obedience of the subject co-extensive.

To question whether in our constitution the *passive obedience* and *non-resistance* of the subject be to be maintained, is substantially to question whether the *law* can bind the community and its members to submission. And this is a question, that I have not yet found moved by the most devoted enthusiasts for regal power, with all its fanatic, arbitrary, indefeasible *jure divino* prerogatives. In arbitrary regal governments, the law must ever be uncertain, because the will of the prince, which constitutes it, is naturally uncertain, and



Submission to arbitrary power can only be made upon the principle of passive obedience and non-resistance.

and his power is essentially unlimited, because it has no external check nor controul; whoever therefore voluntarily submits himself to the unlimited power of such an uncertain legislature, can do it upon no other condition than that of *passive obedience* and *non-resistance*; for his submission to such a power is a formal undertaking to pay the most unconditional and unexceptionable obedience to every command, that the will of his sovereign shall suggest and enjoin. Such truly is *passive obedience*, which excludes resistance; and such *passive obedience* is morally, physically, and metaphysically impossible in the happy constitution of our government. No one ever pretended, that our monarchy was purely regal, that is arbitrary and unlimited; but if it be limited, its power exceeds not its own bounds; where the power to command ceases, there ends the obligation to obey; and within this line of limitation, which is the known line of the law, the obedience and non-resistance of the subject are as universally indispensable, as out of it they are absolutely impossible; for obedience is the effect of the relation of superior and subject; out of the line of limitation this relation ceases; without the cause therefore the effect can certainly never be produced.

Out of the line of the law no power to command nor obligation to obey.

If a national characteristic can be affixed to Englishmen beyond that of generosity and valour, it is their implacable tenaciousness of the grounds, upon which they divide themselves into domestic faction and party. In order to support these grounds, the common recourse of each party is to the delusive and masked battery of general propositions; for it is but too true, that *qui versatur generalibus, versatur dolosè*. It is a common but true observation in ethics, that every vice hath a kindred virtue, under the garb of which it wishes to appear. Nothing can be more notorious, than the effect of misapplying these general principles, and deducing from them the most opposite conclusions, according to the temper of the times, and dispositions of the parties judging and arraigned upon them. What so awfully terrible, as to behold the decollation of a Sidney by the solemn judgment of his country in 1683, \* for writing the political doctrine, for which he was canonized within five years after by a parlia-

Effects of misapplying general principles.

\* Colonel Algernon Sidney was found guilty of high treason, chiefly for his book, which he had written, but not published, upon government in answer to Sir Robert Filmer, and was beheaded on the 7th of December, 1683, and his attainder was reversed by parliament in 1689, 1 W. & Mary.

mentary

mentary expiation, as an illustrious martyr to truth and the constitution.

We are I trust now happily secure, that such a scene will never be repeated in this country. But let us not in our security encourage, by disregarding the malicious attempts of those, who directly aim at discrediting, confounding, and subverting our present establishment. There is an affectation of triumph in these innovating zealots, to emulate the glory of some former patriarchs of civil liberty. It would be wanton presumption in me to attempt to delineate their contrast, after the late masterly portraits of the old and the new whig by the political Titian of our modern school.

The binding power of parliament proportionate to the excellency of our constitution.

The preceding reflections have, I trust, sufficiently evinced, that the coercive power of the British legislature is binding upon every member of the community, in proportion as the British constitution excels all other known establishments in wisdom and energy. Little need be said upon the subject of the persons, who are bound to the duty of this deference and submission to its authority. Every person born under the allegiance of our king, as the law of England now stands, remains during his life a natural subject to him: it is a maxim, that

Who are subject to our laws.

*nemo potest exuere patriam*; no one can of himself throw off the duty of allegiance to his original native sovereign. As no power, but that of parliament, can naturalize, so it consequently appears clear, that no power, but that of parliament, can dissolve and completely do away the relation of subject and sovereign between our king and a person born under his allegiance. The king in the plenitude of his prerogative cannot naturalize; and it seems consonant with the maxim, that *it requires at least as great a power to abrogate, as to enact*, that he cannot completely release the allegiance of any of his subjects. Protection and subjection are relative duties; and when the law speaks of *debitum ligeantiae*, it necessarily carries along with it the right or credit of protection, which the subject is entitled to from the king, in whom is collected the whole majesty of the state, *subjectio trahit protectionem*. I am now considering what the law of England is upon this point; and I do it under correction and with deference, that if the public should perceive, that an alteration in the law would be adviseable, parliament may take the subject under consideration, and correct the inconveniencies, that may arise from it.

As the king cannot naturalize, so he cannot release the allegiance of his subject.

Sir

It is not in the power of an individual to throw off the obligation he owes to his native sovereign.

Sir Matthew Hale says, \* “That the natural born subject of one prince cannot by swearing allegiance to another prince put off or discharge him from that natural allegiance; for this natural allegiance was intrinsic and primitive, and antecedent to the other, and cannot be divested without the concurrent act of that prince, to whom it was first due.” Although I have before said, that it was competent for any member of the community to quit any particular society, yet I do not mean, that he can thereby absolve himself from the duties and obligations, which by his birth he contracted to it, and which revive, whenever he returns to his native community, and have their force upon all his actions, which affect or relate unto it. Thus if such a person (as was the case of Dr. Storie) † having entered into the service of a foreign power be taken in open war, he is indictable for treason, and will be treated not as an enemy of war, but as a traitor to his country. In England the in-

\* Hale’s Pl. Cor. 68.

† Dyer 300. He had sworn allegiance to king Philip of Spain, and pleaded to his indictment, that he was no subject to queen Elizabeth, though born at Sarum; the court rejected his plea, and he was executed as a traitor.

heritable

heritable capacity is the test of a person's being a natural born subject; whoever therefore can inherit and transmit lands in England is under the protection of our king, owes him his allegiance, and whenever he is within the territorial jurisdiction of our laws, he is completely amenable to them.

The inheritable capacity is the test of a person's being a natural born subject.

The singularity and great inconveniency of the law, as it now stands, consists in our being obliged by some acts of parliament (as the navigation acts, &c. &c.) to consider and act by some persons in respect of navigating vessels, paying the alien duties, and in other respects, as if they were really aliens, whilst they enjoy by birthright the inheritable capacity within this kingdom, which essentially carries with it all the rights and liberties of a native Englishman. The authority of Calvin's case never having been questioned nor impeached, remains to this day a part of the common law of the land; and it is known to every one, that the common law can only be altered by an express statute. \* "For statutes are not presumed to make any alteration in the common law, further or otherwise, than the act does expressly declare; therefore in all general matters the law pre-

Inconveniences of the present law of alienage.

\* 11 Mod. 150.

sumes the act did not intend to make any alteration; for if parliament had had that design, they would have expressed it in the act." I have never been able, and I have long searched, to find the statute, which alters the law laid down in the most solemn and unequivocal manner in Calvin's case.

The inheritable capacity, which attached to a man by his birth within the dominions of the king of England, not only remains to him \* "whilst the country, in which he was born remains under the subjection of the prince, to whom it was subject at the time of his birth, but for ever after in case it changes its sovereign.

"No subsequent acquisition of a country by any prince or state, whether by conquest, inheritance, exchange, or purchase, shall give this right to those, who were born during the possession of the former sovereign. Thus for example, every person born within any of the British colonies in America, before their independence was acknowledged by this country, is and ever will be a natural born subject of Great Britain, capable of inheriting lands in this country, and claiming all the other rights of an Englishman. And

\* Investigation of the Native Rights of British Subjects, by the author, p. 19.

for the same reason, every person born in Canada, whilst it remained under the subjection of the French king, cannot claim the rights of a natural born Englishman (although now a British subject) without an express act of naturalization. The judgment of the court upon this point in Calvin's case is thus expressed by my Lord Coke :  
 \* “ For as the antenati (*or those born before the union of the two crowns of England and Scotland*) remain aliens, as to the crown of England, because they were born, when there were several kings of the several kingdoms, and the uniting of the kingdoms by descent subsequent cannot make him a subject to that crown, to which he was an alien at the time of his birth; so albeit the kingdom (which Almighty God of his infinite goodness and mercy divert) should by descent be divided and governed by several kings, yet was it resolved, that all those, that were born under one natural obedience, whilst the realms were united under one sovereign, should remain natural born subjects and no aliens; for that naturalization due and vested by birthright cannot by any separation of the crown afterwards be taken away; nor he,

Canadians, born under the French government, aliens; Bostonians, born under the British government, inheritable in England.

No exchange of kingdom can alter the condition of a man's inheritable capacity.

\* Calvin's Case, ubi supra.



that was by judgment of law a natural born subject at the time of his birth, become an alien by such a matter *ex post facto*, and in that case, upon such an accident our *post natus* may be *ad fidem utriusque regis*."

Aliens resident  
are amenable  
to the laws.

Besides this original native obligation, which is contracted by birth, to submit to the laws of the country, in which we are born, whoever chuses to reside in a particular community, and receives the protection of its laws, becomes of course amenable to them, and as much liable to their rigour and severity, if he violate them, as the natural born subject. The indulgences, which our laws grant to aliens resident in this country are so very ample, that their obligation and compulsion to observe them can never be justly complained of.

The duty and  
submission of  
the subject  
paid to the executive  
power.

When the general original duty and submission of the members of this community are called into action, the constitution, which has concentrated and deposited the collective majesty of the whole people in the executive power, directs and obliges them to pay and express this duty and submission to the person, in whom the executive power of government is vested. When this duty or submission is practically spoken of, it is called  
*allegiance* ;

*allegiance*; and this my Lord Coke says, \* “ is a true and faithful obedience of the subject due to his sovereign.” In this sense therefore I shall always treat of it; for thus only in reality is the duty performed. † Sir Michael Forster says, that this allegiance “ is undoubtedly due to the person of the king; but in that respect *natural* allegiance differeth nothing from what we call *local*. For allegiance considered in every light is alike due to the person of the king; and is paid, and in the nature of things, must constantly be paid to that prince, who for the time being is in actual and full possession of the regal dignity.”

Natural allegiance in some things differs not from local.

Whatever actions of individuals tend to vilify, confuse, disturb, interrupt, subvert, or destroy that political form of government, which the majority of the community have established, and chosen to support and maintain, they are, properly speaking, public wrongs, crimes, or misdemeanors; and because our constitution collects and concentrates the majesty of the state in the person, to whom it entrusts the executive power of the government, therefore with great propriety it ex-

What are public crimes or misdemeanors.

\* Calvin's Case, 5.

† Crown Law, 184.

The crown  
taken meta-  
phorically for  
the person, who  
wears it.

presses the code of criminal law by the term *pleas of the crown*. I blush at the opportunity of observing, that when our law books mention the rights, privileges, and prerogatives of *the crown*, they speak metaphorically only of the person, who wears it; and not in that literal sense, which a modern philosopher of illuminating fame has most ingeniously and wisely annexed to the phrase.

\* The crown then, or (to speak more intelligibly to some of my readers) the king or queen regnant of Great-Britain, in † “whom centers the majesty of the whole community, is supposed by the law to be the person injured by every infraction of the public rights belonging to that community, and is therefore in all cases the proper prosecutor for every public offence. For all public wrongs ‡ “are offences either against the king’s peace or his crown and dignity, and are so laid in every indictment; for though in their consequences they generally seem (except in the

\* “In England this right (viz. of making peace and war) is said to reside in a metaphor shewn at the tower for sixpence or a shilling a-piece; so are the lions; and it would be a step nearer to reason, to say it resided in them; for any inanimate metaphor is no more than a hat or a cap.” *Payne’s Rights of Man*, p. 61.

† Black. Com. b. iv. c. i. p. 2.

‡ Black. Com. b. i. c. vii. p. 286.

case of treason, and a very few others) to be rather offences against the kingdom, than the king; yet as the publick, which is an indivisible body, has delegated all its power and rights, with regard to the execution of the laws, to one visible magistrate, all affronts to that power and breaches of those rights are immediately offences against him, to whom they are so delegated by the public. He is therefore the proper person to prosecute for all public offences and breaches of the peace, being the person injured by the law."

All prosecutions in the name of the king, as the person injured, by the law.

It is beyond my intention to enter into an elaborate essay or treatise upon the criminal law of England. I refer such of my readers, who wish to be more accurately informed upon this subject, to the more diffused and learned works of Hale, Hawkins, Forster, Blackston, and others, who have handled it at large. I shall merely adhere to the general principles of crown law, in order the more pointedly to enforce the obligation of every resident member of the community to observe and submit to it, and the fiduciary duty of our governors to ensure and protect the community against all secret and open efforts and attempts to render it contemptible, inefficient, or impracticable.

Obligation of all resident subjects to submit to, and duty of magistrates to enforce the law.

It

It is a conclusion of false delicacy to suppose, that the knowledge of the criminal or crown law of England is to be confined to acting magistrates, practitioners of the law, or those unfortunate wretches, who have been or are likely to become the passive objects of its rigour and severity. Would to God that the barefaced and boasted efforts of some of the discontented minority to traduce, weaken, disturb, or subvert the present establishment, did not superadd a weight of reason to those, upon which the late judges Blackston and Forster grounded the necessity of rendering this knowledge general to all men. \* “ The knowledge of this branch of jurisprudence, which teaches the nature, extent, and degrees of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual in the state. For († as a very great master of the crown law has observed upon a similar occasion) no rank or elevation in life, no uprightness of heart, no prudence or circumspection of conduct should tempt a man to conclude, that he may not at some time or other be deeply interested in these

The general knowledge of the crown law necessary for all men.

\* Black. Com. b. iv. c. ii. p. 2.

† Forster.

## Of Offences against the State.

researches. The infirmities of the best among us, the vices and ungovernable passions of others, the instability of all human affairs, and the numberless unforeseen events, which the compass of a day may bring forth, will teach us (upon a moment's reflection) that to know with precision what the laws of our country have forbidden, and the deplorable consequences, to which a wilful disobedience may expose us, is a matter of universal concern."

\* "A crime or misdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms; though, in a common usage, the word *crimes* is made to denote such offences, as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence are comprized under the gentler name of *misdemeanors* only.

What a crime  
or misdemeanor.

"The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, seems principally to consist in this; that private wrongs or civil injuries

Difference between public and private wrongs, and between crimes and civil injuries.

\* Black. Com. b. iv. c. i. p. 5.

are an infringement or privation of the civil rights, which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community, considered as a community in its social aggregate capacity. As if I detain a field from another man, to which the law has given him a right, this is a civil injury, and not a crime; for here only the right of an individual is concerned, and it is immaterial to the public, which of us is in possession of the land; but treason, murder, and robbery are properly ranked among crimes; since besides the injury done to individuals, they strike at the very being of society, which cannot possibly subsist, where actions of this sort are suffered to escape with impunity.

“ In all cases the crime includes an injury; every public offence is also a private wrong, and somewhat more; it affects the individual, and it likewise affects the community. Thus treason in imagining the king's death involves in it conspiracy against an individual, which is also a civil injury; but as this species of treason in its consequences principally tends to the dissolution of government, and the destruction thereby of the order and peace of society,

society, this denominates it a crime of the highest magnitude. Murder is an injury to the life of an individual; but the law of society considers principally the loss, which the state sustains by being deprived of a member, and the pernicious example thereby set for others to do the like."

I take it for granted, that few or none of my readers will be either so circumstanced or disposed, as to stand in need of information or admonition to avoid the more common, gross, and notorious treasons, felonies, and misdemeanors, which generally make up the black catalogues of our criminal code. As little do we expect to find a man within the circle of our acquaintance ignorant, that rebellion, murder, forgery, and theft are criminal in the eye of the law, as we do to find him disposed to become guilty of them.

*The grosser and more common crimes known to all.*

It cannot be denied, but that there are some less considerate statutes still remaining in our written code of law, that have rendered certain actions capitally criminal, that in their nature do not appear to carry with them that heinousness of guilt, as to require for atonement the blood of the delinquent; such amongst others are \* breaking down the

*Some actions seem not so heinous as to deserve capital punishment.*

\* 9 Geo. I. c. xxii.



mounds of a fish pond, or cutting down a fruit tree in an orchard, or a shrub in a pleasure ground. Such actions cannot certainly be committed without some civil injury being done thereby to our neighbour ; and the necessary premonitions against them will be more properly enforced and better received from the pulpit or the bench, than from private lecture. We do not however arrogantly upbraid or question the power of parliament, that once found it expedient to enact these laws, but with Judge Blackston we hint it with decency to those, whose stations enable them to judge, that this great rigour may be no longer necessary to prevent the mischief.

**Epidemic rage  
for illumination.**

My primary object in making this publication is to settle and reconcile the minds of my countrymen to the present form of our constitution and government. I find many of them seized with an epidemic rage for illumination. The malady in its highest paroxysm is of no dangerous tendency, unless injudiciously treated ; a fair practitioner cannot fail from improving the constitution of his patient by the application of the most simple of all remedies ; but the noxious draughts of the empyric will assuredly render the disease irremediable.

Daily

Daily experience shews, that habit familiarizes us to the most dangerous and tremendous objects. Discourses upon the most terrific subjects by frequency lose all their horror. An artful envelop will convey the most dissolute sentiment to the chastest heart; and a sentimental disguise will sometimes lodge the very rankest treason in a breast of unfulfilled loyalty. Loud is the cry of duty upon every one, who sees his neighbour exposed to the danger, to sound the alarm. Which of you, my countrymen, could look unmoved upon your child, your friend, your love, in the act of tasting a fair tempting fruit, which you knew contained a deadly poison?

We easily familiarize with the most terrific objects.

Cicero said truly, *ea sunt animadvertenda peccata maximè, quæ difficillime præcaventur* \*; those crimes are to be the most loudly censured, which are the most difficult to prevent.

Greatest caution to be had against mischiefs that are the least suspected.

When therefore I perceive many of my fellow citizens seduced by the false reasoning of certain modern publications, first into discontent and contempt of government, then into the most treasonable wishes for its utter subversion, how are we to prevent these sentiments from breaking out into overt acts of rebellion, but by dragging forth from his

\* Pro Sexto Roscio, 40.

traitorous cell of darkness the lurking spirit of seduction? Exposed to the broad day light of the British constitution, his hideous deformity will overwhelm with horror the very dupes of his artful disguise.

Injuries done to the community by the violation of the laws.

According to the principles already laid down, there can be no greater coercion upon subjects to obey the laws of their country, than what is imposed by our constitution. As each individual gives his assent to every law, so has he an interest in their observance and preservation. Every sort of condemnation, resistance, and opposition to the law, is an injury to those, who enacted it; the contempt of magistrates is an insult to the community, whose delegates they are; the impeachment of their authority is an arraignment of the power of the people, who gave it; and a disrespect for the king is the most direct contempt of the people, whose majesty is collected in his awful personage.

Self protecting rights of the community.

The grand protecting principle of our constitution is, not to permit an injury without a remedy; nor can it be conceived, that the constitution itself, which is the source and reservoir of all the laws and rights of the people, should leave itself and the community so unprotected, as to be unable to preserve the collective corporate rights of the whole, whilst

whilst it enables individuals to preserve their subordinate rights, which spring out of them.

It is evident, that whoever has a right to be protected, has a transcendent right to preserve the means of his protection. The rights and liberties of Englishmen can only be protected by the constitution and government; and they can no longer protect, than they preserve their respect, vigor, and energy. It is not only the interest, but the duty of every Englishman to support and preserve them; and therefore political criminality cannot be carried to a higher pitch, than a determined intention, desire, and attempt to vilify, weaken, and overturn the constitution and government. If the mind be clearly bent upon the mischief, the means adopted to bring it to bear are very immaterial; though no means can be more obnoxious than attempts to infect the minds of others with the deadly contagion, by spreading it as widely as possible, in books disguised under delusive and insidious titles. For confident I am, that few of my countrymen would read, much less would they encourage and promote the circulation of any book, which bespoke upon the face of it an avowed intention and design of traducing, disturbing, and overturning

The preservation of our rights depends upon the energy of government.

Sedition & books published under delusive titles.

overturning the constitution and government of Great Britain. As the author and publisher of such a book would upon an impartial trial by Englishmen certainly be found guilty of sedition and treason, so could the encouragers and promoters of such a seditious and treasonable libel little expect to be innocently acquitted by a fair and upright jury of their countrymen.

Considerations  
of state tran-  
scendent over  
private con-  
siderations.

If the private rights of individuals are to be protected and preserved from civil injury and invasion, how necessary for that very purpose is it, that the protecting and preserving power itself should be kept up in unimpaired vigor and perfection; nay so transcendently superior to private considerations are the considerations of the state, that \* “ though laws prevent consequences injurious to particulars, where they can consistently with social good, yet in matters, which concern the existence of the society, or government, consequences injurious to particulars must not only be suffered to take place, but even sought for and indulged, if they have a tendency to prevent consequences injurious to government itself. On this reason

\* Yorke's Considerations on the Law of Forfeiture, p. 40, 41.

stand those severe laws, which have been made in several states against neutrality in times of common danger. It is agreeable to the policy and original compact of government to blend and involve the interest of every member with its own." So adds this learned constitutional writer. "No-thing is more natural, than the construction, which civil laws have put on treasons against government, that when a man endeavours the dissolution of it, he means to disclaim all those benefits and rights, which it has either made him capable to enjoy, or the instrument to convey." Whence elsewhere comparing the *imperial* with the *consular* state of ancient Rome, he says: \* "An unguarded saying was treason against emperors; but in a free state a man could only be accused of actions, which had a direct tendency to overturn government." And although he says, that Augustus on account of the licentious writings and conversation of Cassius Severus, had caused the matter of libel to be treated capitally, as a crime of *læsa majestas*, yet † "the mildness of his nature inclined him, and the liberty of Rome so lately lost, made

To attempt the dissolution of government, is to disclaim the rights of society.

\* Yorke's Considerations on the Law of forfeiture, p. 51.

† Ibid. p. 50.

it his interest, not to deviate in things of this high importance from the constitution of his country. At the same time he saw his own security and the tranquillity of the state depended on the exactest support of his authority; and the execution of these laws." With little plausibility can the right of publicly arraigning government be insisted upon by those, who trace our civil rights from an early date. \* "The old Britons were very careful of domestic peace, in preventing private caballing and seditious reflections upon administration; their law allowing none but the magistrates to talk of the affairs of the commonwealth, and that only in open council."

Execution of the laws necessary for the preservation of society.

It is necessary in every state, but emphatically so in the political government of Great Britain, in which the people make the laws, that the authority and execution of them should be strictly and even rigorously supported. † "The prosperity and greatness of empires ever depended, and ever must depend upon the use their inhabitants make of their reason in devising wise laws, and the

\* Gurdon, vol. i. p. 17. who quotes Bodin de Rep.

l. i. c. 4.

† Erskine's Argument in the Case of the Dean of St. Asaph, p. 211.

spirit and virtue, with which they watch over their just execution."

The great criterion, by which criminality can be affixed to any writing or publication, is the establishment of this point, *quo animo* it was written or published; for *actus non facit reum, nisi mens sit rea*; the mere physical action is not in its nature susceptible of guilt or criminality; the vicious and malicious intention of the mind alone can affix immorality, criminality, or guilt unto it; as is clearly distinguished in the cases of chance-medley and murder. \* "So lord Camden, in prosecuting the late Dr. Shebbeare, told the jury, that he did not desire their verdict upon any other principle, than their solemn conviction of the truth of the information, which charged the defendant with a wicked design to alienate the hearts of the subjects of this country from their king upon the throne." And this respectable peer followed closely the principles of the great chief justice Holt, who in Mr. Tutchin's case † held a similar language to the jury. "Now you have heard this evidence, you are to consider whether you are satisfied, that Mr. Tutchin is guilty of writing, composing, and pub-

The guilt of a crime consists in the mind and intention.

\* Ersk. *ibid.* p. 205.

† State Trials, vol. v. p. 528.



Writing against  
government a  
crime.

lishing these libels. They say, they are innocent papers and no libels, and they say nothing is a libel, but what reflects upon some particular person. But this is a very strange doctrine, &c. If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist, &c."

Some publications of the present day, which seem to have acquired a more extensive circulation, than from the bare chance sale of the impression, appear to me to have been written, not with an immediate view or intention of enforcing due submission and subordination to government. When an author commits himself in print, he opens an universal correspondence with all mankind; and I shall therefore claim no other, than the constitutional liberty of the press, to warn my countrymen of the real unequivocal import and tendency of one out of many of these late publications, which has appeared under the delusive and insidious title of the *Rights of Man*. The author shall not be interrupted by me in the right, which he claims of speaking for himself; nor will I attempt to invade the right of any one of my readers to think for himself, if he undertake to judge *quo animo* these doctrines were written, and continue

now

now to be published. I shall not introduce one observation or comment of my own.

\* “There never did, there never will, and there never can exist a parliament, or any description of men, or any generation of men, in any country, possessed of the right or the power of binding and controuling posterity to the *end of time*, or of commanding for ever how the world shall be governed, or who shall govern it; and therefore all such clauses, acts, or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themselves null and void.”

† “The vanity and presumption of governing beyond the grave, is the most ridiculous and insolent of all tyrannies.”

‡ “It is somewhat extraordinary, that the offence, for which James II. was expelled, that of setting up power by *assumption*, should be re-acted under another shape and form, by the parliament that expelled him.”

§ “All therefore that can be said of the clauses of the act of settlement is, that they are a formality of words, of as much import, as if those, who used them had addressed a congratulation to themselves, and in the cri-

• Vid. Rights of Man, p. 9. † Ibid. p. 9.

‡ Ibid. p. 12. § Ibid. p. 14.

ental stile of antiquity, had said, O parliament, live for ever."

\* "It will consequently follow, that if the clauses themselves, so far as they set up an *assumed, usurped* dominion over posterity for ever, are unauthoritative, and in their nature null and void."

† "When I contemplate the natural dignity of man; when I feel (for nature has not been kind enough to me to blunt my feelings) for the honour and happiness of its character, I become irritated at the attempt to govern mankind by force and fraud, as if they were all knaves and fools, and can scarcely avoid disgust at those, who are thus imposed upon."

‡ "Can then Mr. Burke produce the English constitution? If he cannot, we may fairly conclude, that though it has been so much talked about, no such thing as a constitution exists, or ever did exist, and consequently that the people have yet a constitution to form."

§ "The English government is one of those, which arose out of a conquest, and not out of society, and consequently it arose over the people; and though it has been much

\* Rights of man, p. 14.

† Ibid. p. 51.

‡ Ibid. p. 54.

§ Ibid.

modified from the opportunity of circumstances since the time of William the Conqueror, the country has never yet regenerated itself, and is therefore without a constitution."

\* "In England, game is made the property of those, at whose expence it is not fed; and with respect to monopolies, the country is cut up into monopolies. Every chartered town is an aristocratical monopoly in itself, and the qualification of electors proceeds out of those chartered monopolies. Is this freedom? Is this what Mr. Burke means by a constitution?"

† "In these chartered monopolies, a man coming from another part of the country is hunted from them, as if he were a foreign enemy. An Englishman is not free of his own country; every one of those places presents a barrier in his way, and tells him he is not a freeman—that he has no rights."

‡ "Every thing in the English government appears to me the reverse of what it ought to be, and of what it is said to be. The parliament, imperfectly and capriciously elected as it is, is nevertheless *supposed* to hold the national purse in *trust* for the nation; but in the manner, in which an English parlia-

\* Rights of Man, p. 58. † Ibid.

‡ Ibid. p. 60.

ment is constructed, it is like a man being both mortgager and mortgagee; and in the case of misapplication of trust, it is the criminal sitting in judgment upon himself."

\* "In England, the right of war and peace is said to reside in a *metaphor*, shewn at the Tower for sixpence or a shilling a-piece; so are the lions; and it would be a step nearer to reason to say it resided in them; for any inanimate metaphor is no more than a hat or a cap."

† "It may with reason be said, that in the manner the English nation is represented, it signifies not where this right resides, whether in the crown or in the parliament. War is the common harvest of all those, who participate in the division and expenditure of public money in all countries. It is the art of *conquering at home*; the object of it is an increase of revenue; and as revenue cannot be increased without taxes, a pretence must be made for expenditures. In reviewing the history of the English government, its wars and its taxes, a stander-by, not blinded by prejudice, nor warped by interest, would declare, that taxes were not raised to carry on wars, but that wars were raised to carry on taxes."

\* Rights of Man, p. 61.

† Ibid.

"The

\* “ The portion of liberty enjoyed in England, is just enough to enslave a country by, more productively than by despotism; and that, as the real object of all despotism is revenue, that a government so formed obtains more than it could, either by direct despotism, or in a full state of freedom, and is therefore on the ground of interest opposed to both.”

† “ Aristocracy is a law against every law of nature, and nature herself calls for it's destruction. Establish family justice, and aristocracy falls. By the aristocratical law of primogenitureship, in a family of six children, five are exposed. Aristocracy has never but *one* child; the rest are begotten to be devoured; they are thrown to the cannibal for prey, and the natural parent prepares the unnatural repast.”

‡ “ There is an unnatural unfitness in an aristocracy to be legislators for a nation; their ideas of *distributive justice* are corrupted at the very source; they begin life by trampling on all their younger brothers and sisters, and relations of every kind, and are taught and educated so to do. With what ideas of justice or honour can that man enter an house

\* Rights of Man, p. 62.

† Ibid. p. 69.

‡ Ibid. p. 70.

of legislation, who absorbs in his own person the inheritance of a whole family of children, or doles out to them some pitiful portion with the insolence of a gift?"

\* "A body of men holding themselves accountable to nobody, ought not to be trusted by any body."

† "By engendering the church with the state, a sort of mule animal capable only of destroying, and not of breeding up, is produced, called *the church established by law*."

‡ "The revolution of 1688, however from circumstances it may have been exalted beyond its value, will find its level; it is already on the wane, eclipsed by the enlarging orb of reason, and the luminous revolutions of America and France. In less than another century it will go, as well as Mr. Burke's labours, to the family vault of all the Capulets. Mankind will then scarcely believe, that a country calling itself free, would send to Holland for a man, and clothe him with power, on purpose to put themselves in fear of him, and give him almost a million sterling a year for leave to *submit* themselves and their posterity, like bond-men and bond-women, for ever."

\* Rights of Man, p. 77.

† Ibid. p. 76.

‡ Ibid. p. 82.

\* “ As to who is king in England or elsewhere, or whether there is any king at all, or whether the people chuse a Cherokee chief, or a Hessian huffar for a king, is not a matter that I trouble myself about.”

† “ This ought to be a caution to every country, how it imports foreign families to be kings. It is somewhat curious to observe, that although the people of England have been in the habit of talking about kings, it is always a foreign house of kings; hating foreigners, yet governed by them: it is now the house of Brunswick, one of the petty tribes of Germany.”

‡ “ Government with insolence is despotism; but when contempt is added it becomes worse; and to pay for contempt is the excess of slavery. This species of government comes from Germany, and reminds me of what one of the Brunswick soldiers told me, who was taken prisoner by the Americans in the late war—‘ Ah!’ said he, ‘ America is a fine free country, it is worth the people’s fighting for; I know the difference by knowing my own; in my own country, if the prince says, Eat straw, we eat straw.’ God help that country, thought I,

\* Rights of Man, p. 122. † Ibid. p. 123.

‡ Ibid. p. 124.



be it England or elsewhere, whose liberties are to be protected by German principles of government and princes of Brunswick."

\* "Mr. Burke talks about what he calls an hereditary crown, as if it were some production of nature; or as if, like time, it had a power to operate not only independent, but in spite of man; or as if it were a thing or a subject universally consented to. Alas! it has none of those properties, but is the reverse of them all. It is a thing in imagination, the propriety of which is more than doubted, and the legality of which in a few years will be denied."

† "If men will permit a second reflection to take place, and carry that reflection forward but one remove out of their own persons to that of their offspring, they will then see that hereditary succession become in its consequences the same despotism to others, which they reprobated for themselves. It operates to preclude the consent of the succeeding generation, and the preclusion of consent is despotism."

‡ As therefore hereditary succession is out of the question with respect to the *first* generation, we have now to consider the cha-

\* Rights of Man, p. 126. † Ibid. p. 127.

‡ Ibid. p. 128.

rafter, in which *that* generation acts with respect to the commencing generation, and to all succeeding ones. It assumes a character to which it has neither right nor title."

\* "After all, what is this metaphor called a crown, or rather what is monarchy? Is it a thing, or is it a name, or is it a fraud? Is it 'a contrivance of human wisdom,' or of human craft to obtain money from a nation under specious pretences? Is it a thing necessary to a nation? If it is, in what does that necessity consist, what services does it perform, what is its business, and what are its merits? Doth the virtue consist in the metaphor, or in the man? Doth the goldsmith that makes the crown, make the virtue also? Doth it operate like Fortunatus's wishing cap, or Harlequin's wooden sword? Doth it make a man a conjuror? In fine, what is it? It appears to be a something going much out of Fashion, falling into ridicule."

† "If government be what Mr. Burke describes it, 'a contrivance of human wisdom,' I might ask him, if wisdom was at such a low ebb in England, that it was become necessary to import it from Holland and from

\* Rights of Man, p. 130. † Ibid.

Hanover? But I will do the country the justice to say, that was not the case; and even if it was, it mistook the cargo. The wisdom of every country, when properly exerted, is sufficient for all its purposes; and there could exist no more real occasion in England to have sent for a Dutch stadtholder, or a German elector, than there was in America to have done a similar thing."

\* "If monarchy is a useless thing, why is it kept up any where? and if a necessary thing, how can it be dispensed with?"

† "When the people of England sent for George the first (and it would puzzle a wiser man than Mr. Burke to discover for what he could be wanted, or what service he could render) they ought at least to have conditioned for the abandonment of Hanover. Besides the endless German intrigues, that must follow from a German elector being king of England, there is a natural impossibility of uniting in the same person the principles of freedom, and the principles of despotism, or, as it is usually called in England, arbitrary power; a German elector is in his electorate a despot; how then could it be expected, that he should be attached to prin-

\* Rights of Man, p. 132. † Ibid. p. 133.

ciples of liberty in one country, while his interest in another was to be supported by despotism? The union cannot exist; and it might easily have been foreseen, that German electors would make German kings."

\* "A German elector trembles for the fate of despotism in his electorate; and the duchy of Mecklenburgh, where the present queen's family governs, is under the same wretched state of arbitrary power, and the people in slavish vassalage."

† "With respect to the house of commons, it is elected but by a small part of the nation."

‡ "The continual use of the word *constitution* in the English parliament, shews there is none; and that the whole is merely a form of government without a constitution, and constituting itself with what powers it pleases. If there were a constitution, it certainly could be referred to; and the debate on any constitutional point would terminate by producing the constitution.

§ "Whether it be the court of Versailles, or the court of St. James, or of Carlton-house, or the court in expectation, signifies

\* Rights of Man, p. 134. † Ibid. p. 139. ‡ Ibid. § Ibid. p. 151.

not; for the caterpillar principle of all courts and courtiers are alike. They form a common policy throughout Europe, detached and separate from the interest of nations; and while they appear to quarrel, they agree to plunder."

Left however the public should not have been sufficiently initiated by the foregoing precepts into the full purity and depth of the illuminating mysteries of this apostle of modern liberty, and lest any of his devoted disciples may still retain the slightest tincture of deference, attachment, or submission to our constitution and government, he has in another later publication more determinately attempted to irradiate their minds with a blaze of new lights, and elevate their hearts to a manly resistance against the tyrannical usurpations of their present rulers. \* *Government*, says he, *is but now beginning to be known*; and † *there is a morning of reason rising upon man on the subject of government, that has not appeared before*. If the world however should hereafter be left groping about in the dim twilight of opening day, their future

\* Payne's Rights of Man, part the second, containing principles and practices, p. 75.

† Ibid. p. 76.

Falls, wanderings, and errors will certainly not lie at the door of this new Phœbus; he has now spent all his powers in vainly stimulating his jaded courfers to the meridian goal. Let the public judge of his last intentions and efforts by the following samples :

\* “ On all cases that apply universally to a nation, with respect to systems of government, a jury of *twelve* men is not competent to decide.”

† “ The only effectual jury in such cases would be a convention of the whole nation fairly elected; for in all such cases the whole nation is the vicinage.”

‡ “ As revolutions have begun (and as the probability is always greater against a thing beginning, than of proceeding after it has begun) it is natural to expect, that other revolutions will follow.”

§ “ The origin of the government of England, so far as relates to what is called its line of monarchy, being one of the latest, is perhaps the best recorded.”

¶ “ From such beginning of governments, what could be expected but a continual system of war and extortion? It has established

\* Rights of Man, part 2. Pref. p. xiii. † Ibid. p. xiv. ‡ Ibid. p. 4. § Ibid. p. 16. ¶ Ibid.

itself into a trade. . The vice is not peculiar to one more than to another, but is the common principle of all. There does not exist within such governments a stamina whereon to ingraft reformation; and the shortest and most effectual remedy is to begin anew."

\* "Man has no authority over posterity in matters of personal right; and therefore no man or body of men had, or can have, a right to set up hereditary government."

† "All hereditary government is in its nature tyranny."

‡ "Government ought to be a thing always in full maturity. It ought to be so constructed as to be superior to all the accidents, to which individual man is subject; and therefore hereditary succession, by being *subject to them all*, is the most irregular and imperfect of all the systems of government."

§ "Hereditary succession is a burlesque upon monarchy."

§ "It requires some talents to be a common mechanic; but to be a king requires only the animal figure of man—a sort of breathing automaton."

\* Rights of Man, P. ii. p. 20. † Ibid. p. 21.

‡ Ibid. § Ibid. p. 23. § Ibid. p. 24.

"When

\* “ When the mind of a nation is bowed down by any political superstition in its government, such as hereditary succession is, it loses a considerable portion of its powers on all other subjects and objects. Hereditary succession requires the same obedience to ignorance, as to wisdom.”

† “ A regency is a mock species of republic, and the whole of monarchy deserves no better description. It is a thing as various as imagination can paint. It has none of the stable character, that government ought to possess. Every succession is a revolution, and every regency a counter revolution. The whole of it is a scene of perpetual court cabal and intrigue.”

‡ “ Certain it is, that what is called monarchy always appears to me a silly contemptible thing. I compare it to something kept behind a curtain, about which there is a great deal of bustle and fuss, and a wonderful air of seeming solemnity; but when by any accident the curtain happens to be open, and the company see what it is, they burst into laughter.”

§ “ We must shut our eyes against reason, we must basely degrade our understand-

\* Rights of Man, P. ii. p. 28.

† Ibid. p. 36.

‡ Ibid. p. 35.

§ Ibid.



ing, not to see the folly of what is called monarchy."

\* "That monarchy is all a bubble, a mere court artifice to procure money, is evident (at least to me), in every character, in which it can be viewed."

† "In England, it is not difficult to perceive, that every thing has a constitution, except the nation."

‡ "No such thing as a constitution exists in England."

§ "The attention of the government of England (for I rather chuse to call it by this name, than the English government) appears, since its political connection with Germany, to have been so completely ingrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing."

|| "With respect to the two houses, of which the English parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The minister, whoever he at

\* Rights of Man, P. ii. p. 38.

† Ibid. p. 50.

‡ Ibid. p. 51.

§ Ibid. p. 56.

|| Ibid. p. 63.

any time may be, touches it as with an opium wand; and it sleeps obedience."

\* "*All hereditary government over a people is to them a species of slavery.*"

† "Not a thirtieth, scarcely a fortieth part of the taxes, which are raised in England, are either occasioned by, or applied to the purposes of civil government."

‡ "It is a perversion of terms to say, that a charter gives rights. It operates by a contrary effect, that of taking rights away."

§ "As one of the houses of the English parliament is in a great measure made up of elections from these corporations, and as it is unnatural, that a pure stream should flow from a foul fountain, its vices are but a continuation of the vices of its origin."

|| "To be a successful candidate, he must be destitute of the qualities; that constitute a just legislator; and being thus disciplined to corruption by the mode of entering into parliament, it is not to be expected, that the representative should be better than the man."

¶ "What is called the house of peers is constituted on a ground very similar to that,

\* Rights of Man, P. ii. p. 65.

† Ibid. p. 81.

‡ Ibid. p. 93. § Ibid. p. 99.

|| Ibid.

¶ Ibid. p. 100.

against which there is a law in other cases. It amounts to a combination of persons in one common interest."

\* "For whatever their separate politics as to parties may be, in this they are united. Whether a combination acts to raise the price of any article for sale, or the rate of wages; or whether it acts to throw taxes from itself upon another class of the community, the principle and the effect are the same; and if the one be illegal, it will be difficult to shew that the other ought to exist."

† "These are but a part of the mischiefs flowing from the wretched scheme of an house of peers. As a combination, it can always throw a considerable portion of taxes from itself; and as an hereditary house accountable to nobody, it resembles a rotten borough, whose consent is to be courted by interest."

‡ "Having thus glanced at some of the defects of the two houses of parliament, I proceed to what is called the crown, upon which I shall be very concise. It signifies a nominal office of a million sterling a year, the business of which consists in receiving the money. Whether the person be wise or foolish, sane or insane, a native or a fo-

\* Rights of Man, P. ii. p. 102. † Ibid. p. 105.

‡ Ibid. p. 107.

reigner, matters not. Every ministry acts upon the same idea that Mr. Burke writes, namely, that the people must be hood-winked, and held in superstitious ignorance by some bug-bear or other; and what is called the crown answers this purpose, and therefore it answers all the purposes to be expected from it."

\* "Notwithstanding the sycophancy of historians, and men like Mr. Burke, who seek to gloss over a base action of the court by traducing Tyler, his fame will out-live their falsehood. If the barons merited a monument to be erected in Runnymede, Tyler merits one in Smithfield."

† "It has cost England almost seventy millions sterling to maintain a family imported from abroad, of very inferior capacity to thousands in the nation."

‡ "Primogeniture ought to be abolished, not only because it is unnatural and unjust, but because the country suffers by its operation."

§ "Change of ministers amounts to nothing. One goes out, another comes in, and still the same measures, vices, and extravagance are pursued. It signifies not, who

\* Rights of Man, P. ii. p. 112. † Ibid. p. 120.

‡ Ibid. p. 148.

§ Ibid. p. 157.

is minister ; the defect lies in the system. The foundation and the superstructure of the government is bad."

\* "The time is not very distant, when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick for men, at the expence of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable. If government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all the purposes may be found in every town and village in England."

† "I presume, that though all the people of England pay taxes, not an hundredth part of them are electors, and the members of one of the houses of parliament represent nobody but themselves. There is therefore no power but the voluntary will of the people, that has a right to act in any matter respecting a general reform.

‡ "I do not believe that any two men, on what are called doctrinal points, think alike, who think at all. It is only those, who have not thought, that appear to agree.

\* Rights of Man, P. ii. p. 161. † Ibid. p. 163.

‡ Ibid. p. 172.

It is in this case, as with what is called the British constitution. It has been taken for granted to be good, and encomiums have supplied the place of proof. But when the nation comes to examine into its principles, and the abuses it admits, it will be found to have more defects, than I have pointed out in this work, and the former."

## C H A P. XVI.

## OF THE ATTEMPTS AND EFFECTS OF REBELS IN THESE KINGDOMS.

Religion often  
made the pre-  
text for rebel-  
lion.

\* “**T**HAT all rebellions did ever begin with the fairest pretences for reforming of somewhat amiss in the government, is a truth so clear, that there needs no manifestation thereof from example; nor were they ever observed to have greater success, than when the colours for *religion* did openly appear in the van of their armed forces; most men being desirous to have it really thought (how bad and vile soever their practices are) that zeal to God’s glory is no small part of their aim; which gilded bait hath been usually held forth to allure the vulgar by those, whose end and designs were nothing else, than to get into power, and so to possess themselves of the estate and fortune of their more opulent neighbours.”

I do not undertake to write a full history of all the disturbances and insurrections, which

\* Dugdale’s Preface to his Short View of the late Troubles in England.

have

have been raised against the government of this realm, but only to submit to the reflection of my countrymen some of the convulsions in the state, which have been heretofore produced by the adoption and propagation of such levelling principles, as are now so frequently and so boldly attempted to be maintained and circulated, in order that a premonitory review of past scenes may prevent the necessity of corrective severity in future.

Convulsions are produced in the state by levelling principles.

The first person, who appears in our chronicles to have acted openly upon this levelling principle, was Walter Tyler; who having been slain in the most emphatical act of his calling, viz. that of levelling himself with his sovereign, may be properly called the protomartyr of levellers in England.--- In the fifth year of king Richard II. A. D. 1381, a collector of the poll tax, which was payable by every one above the age of sixteen years, took a very unwarrantable and indecent method of ascertaining whether the daughter of this Tyler were liable to the tax. The father upon his return home, undertook to execute summary justice upon the collector for the indignity offered to his daughter, and murdered him with his lathing hammer. He was applauded and supported

Wat Tyler the protomartyr of levellers in England.

Cause of Wat Tyler's rebellion.

by



by some malcontents of the day; and from thence broke out the open rebellion, of which Speed gives the following account.

Discontent at  
the Duke of  
Lancaster, and  
at the poll tax.

\* “Not long after the time of that Earles imployment into *Spaine*, there fell out accidents, which doe plainly conuince their error to be great, who thinke that any madnesse is like that of an armed and ungoverned multitude, whereof these times (by a kind of fate proper to childrens raigne) gaue a most dangerous document. The extreame hatred borne by the people to *John Duke of Lancaster*, calling himsele king of *Castile* and *Leon*, and the discontentment taken at an extraordinary taxe, leuied *per pol* upon all sorts of people, who were aboue sixteene yeers of age, which (as all other the euils of the time) they imputed to the duke (the manner being to count them the authors of euils, who are supposed to haue the greatest power of doing them) mooued the enraged multitudes upon flight and small beginnings to runne together in so fearefull a torrent, that it seemed the king and kingdome were sodainely false under their most wicked fury. There were in this most rebellious insurrection, the commons and bond-men (who aspiring by force to a

\* Speed's Chronicle, c. xiii. Mon. 50. p. 733, & seq.

free manumission) principally those of *Kent* and *Essex*, whose example was followed in the neighbourshires of *Surrey*, *Suffolke*, *Norfolke*, *Cambridge*, and other places, by incredible heards and droues of like qualified people, who (specially in *Norfolke*) forced fundry principall gentlemen to attend them in their madding.

“ They of *Kent* embattelled themselves under two banners of *St. George*, and about threescore and tenne persons upon *Blackheath* by *Greenwich*, and from thence came to *London*, where the generality of people inclining to them, they are masters. The priory of *St. John’s* without *Smithfield* they kept burning for about seauen daies, and the goodly palace of the *Sauoy* belonging to the duke, with all the riches therein they consumed by fire in a kinde of holy outrage, for they threw one of their fellows into the flame, who had thrust a piece of stolne plate into his bosom. The rebels of *Essex* came to *Lambeth*, burnt all the archbishop’s goods, and defaced all the writings, rowles, records, and monuments of the *Chancerie*, as hauing a speciall hatred to the lawyers, little to their disgrace, for that they shared herein with good men also, whom they hated. But their desperate wickednesse extended itselfe beyond  
the

The rebels masters of *London*.

The archbishop of *Canterbury’s* records, and those of *Chancery*, burnt.

They murder  
the archbishop  
of Canterbury,  
and treasurer.

the spoyle of houses and substance, laying bloudy hands upon the most eminent and worthy men in the kingdome, for that they had dissuaded the king to put himselfe into their hands at *Greenwich*, where he talked with them out of his barge, and thereby had their maine designe disappointed. *Simon Tibald* archbishoppe of *Canterburie* and chancellour of *England*, a right worthy prelate, and *Sir Robert Hales*, a knight of high courage lord prior of *St. Johns*, and treasurer of *England*, with others they without respect to the majesty of the king, or privilege of their most honourable dignities, most barbarously murdered by beheading them upon *Tower Hill*, among infernall shoutes, and diuellish yels. For the *Tower* itself (from whence they had haled them, the young king being there in person) was open to their execrable insolencies. Neither doth the authority of *Polydore Virgil* affirming, that they were not haled forth, but onely stayed by the rebels, to whom (hee saith they were sent) induce us rather to credite him, than authours living about those very times. There was no little store of other innocent blood shed by them in these tumults. Nor was the king's owne person without manifest perill, against whose life they

they had damnably conspired. It were long to reckon up the kindes of such villainies, as they wrought, but endlesse to recounte the particulars. The common annals set forth this whole tragicall businesse very diligently.

“ They had many captaines of mischiefe, but two principall, *Wat Tyler* of *Maidstone* in *Kent*, (whom *Walsingham* pretily calls the *Idoll of Glouces*,) and *Jacke Straw*, who together had followers to the number (as they were estimated) of about one hundreth thousand; and at one sermon made to them by *John Ball*, *Walsingham* saith, there were about twise as many. Their petitions were full of pride and malice, but easily graunted by the king, the necessity of the times extorting them. They had a chaplaine as gracelesse as themselves, one *John Ball*, an excommunicated priest, who with his wicked doctrine nourished in them their seditious furies, to his own just destruction in the end; but when a great multitude accepting the king's mercy were gone, *Wat Tyler* and his camp departed not, but upon pretence of disliking the articles of peace, sought to winne time, till he might put into full execution his incredible treason, which (as *Jacke Straw* at the time of his execution confessed) were upon that very night of the day, wherein *Wat Tyler*

Spirited by the preaching of *John Ball*.

*Jack Straw's* confession that *Wat Tyler* meant to have murdered the king.

was slaine; to murder the king, and chiefe men; and to erect pettie tyrannies to themselves in every shire; and already one *John Littistar* a dyer in *Norwich* had taken upon him at *Northwalsham* in *Norfolke* the name of the king of the commons, and *Robert Westbroome*, in *Suffolke*, to whom *John Wraw* another lew'd priest had assigned it.

“ Neuer was the kingly race, and commonweale so near to an utter extirpation, as at this present, which was (wee may truly say) miraculously preuented. The yong king in these feares and dangers repairing to *Westminster*, most deuoutly commended his crowne, life, and whole estate to God, nor that in vaine. For *Wat Tyler* with his campe of rascals esteemed to be ten or twenty thousand, (according to the king's proclamation attending in *Smithfield*, but cauilling of purpose upon the conditions of peace, as hee, that meant a further mischief, though they of *Essex* were returned) was entreated to ride to the king, who also sat on horse-backe before Saint *Bartholmewes*, in whose company was that renouned Lord Mayor of *London* *William Walworth* with many other men of birth and place.”

Wat Tyler  
meets the king  
in Smithfield.

Killed by the  
lord mayor.

“ *Wat Tyler* scarce at the last coming, behaved himselfe so insolently, offering to murder  
ther

ther one of the king's knights, Sir *John Newton*, for omission of some *punto* of respect, which he arrogated to himselfe, in more than a kingly manner, was (upon leaue given by the king) boldly arrested with a drawn weapon by the lord maior, a man (say writers) of incomparable courage, which blow was seconded by the said lord, and others, so speedily, that there this prodigie of a traitour was feld and flaine. A death too worthy, for that he dyed by the swords of honourable persons, for whom the axe of an hangman had bene far too good.

“ The commons perceiving the fall of their captaine prepared to use extreme revenge, when the most hopefull yong king, with a present wit and courage (it being for his life and kingdome) spurred forth his horse, and bad them follow him, without being grieved for the losse of a ribauld and traitour, for now hee himselfe would be their captaine. Hereupon they thronged after him into the field, there to haue whatsoeuer they desired. But the most worthy of all *Londoners Walworth*, speedes with one man onely into the citty, raiseth a thousand citizens in armour, brings them (being led in good array by Sir *Robert Knolles*, and others) with *Wat Tyler's* head (which the lord maior had commanded to

The young king headed the rebels who followed him.

bee

bee chopt off from his dead carcase) borne before him upon a speare to the king: that very head, the cursed tongue whereof had dared to say, *That all the laws of England should come out of his mouth.*

The rebels submit and beg their lives.

“ This act restored the crowne, (as it were) and realme to king *Richard*, for the rebels seeing themselves girt in with armed men, partly fled, partly fell upon their knees, and (throwing away all hope in weapon) they answerably to their baseness, begged their lives, who but euen now reputed themselves masters of the field, and of the king; and albeit there was a generall desire in the hearts of loyall men to expiate so many villainies with the bloud of the actors, yet things abroad in the realme being as yet unsettled, they had a generall charter of pardon sealed, and were so sent home into their countries.”

First levelling sermons preached in this country by John Straw.

It is to be further observed, by way of drawing closer the comparison of some latter performances and attempts, with this first exhibition upon our stage, that, \* “ as the rebels marched to London, they set all the prisoners at liberty, of which number was John Straw, a priest of Maidstone, who ex-

\* *Acta Regia*, notes to p. 187.

asperate the people against their superiors by his levelling sermons wherever he came, that as all were the sons of Adam, there ought to be no distinction or superiority; and that all things ought to be equally shared in common\*. He (Wat Tyler) was so insolent, that he told the knight, whom the king sent to desire a conference with him, that he would come when he thought fit; and when he set out, he marched with such lingering state, that the king sending the same knight a second time to hasten him, the commission had like to have cost him his life; and when he arrived in *Smithfield*, the same knight was like to be sacrificed, because he delivered him his message from the king without alighting from his horse; which so provoked the imperious *Tyler*, that he was going to run him through, if the king had not stepped forwards, and called out to his knight to dismount.

“ He demanded in substance, that all the old laws should be abolished, and the form of government altered according to his own fantastical schemes; and that all warrens,

The demands of these ancient levellers.

\* John Ball encouraged the levellers by the following lines :

“ When Adam delved and Eve span,  
“ Who was then the gentleman?”

M m

parks,



parks, and chaces should be made common, and free for the poor, as well as the rich, to fish, fowl, hunt, and the like.”

John Wickliffe  
gave rise in part  
to this rebellion.

The next public exhibition of consequence, which I find to have been attempted by the levellers, or malcontents of the day, originated from John Wickliffe, the parson of Lutterworth, in Leicestershire. This, like most other subsequent essays of the same nature, was attempted to be veiled or cloaked under the specious and imposing form or cry of religion. I shall consider these doctrines merely in a *civil* light, leaving the polemical solution of their theological differences from the established religion to the conscience and judgment of every individual, or of such divines, as they may chuse for their own directors. I speak of Wickliffe and his levelling and anarchical doctrine, after the rebellion of Tyler and Straw, because the government had not then experienced any public attempts or mischiefs from his followers, though I think it highly probable, that the propagation of his principles did produce the most considerable share of this very rebellion; for John Wickliffe began to preach his doctrines about the year of our Lord 1371, about ten years before that rebellion broke out. And it appears clear, that he was suspected

pected to have been concerned with these rebels, from his being summoned and examined in the bishop's court upon his doctrines, in the very year, in which the rebellion happened. Of which examination Mr. Fox speaks thus: \* "Wickliffe being beset with troubles was forced once again to make confession of his doctrine, in which confession, as occasion served, for to avoid the rigor of things, he answered with intricate words, &c. A. D. 1381." And (p. 91.) he intimates, that Wickliffe often recanted, &c. "And now again I do revoke and make recantation, &c." By means whereof Mr. Fox expressly says, "Wickliffe wooed himself out of the bishops snares." And in order to keep himself out of them in future, he went into Bohemia, where he signalized himself not a little in fomenting disturbances against that state; but it appears unquestionable, that he made either a sincere or a mock recantation, which was accepted; for after five years absence he returned to England, and died peaceably at his parsonage house at Lutterworth, on the last day of December 1387.

Wickliffe suspected of being concerned in the rebellion.

John Wickliffe besides many singular doctrines of a mere *spiritual* nature, which

Wickliffe's seditious doctrines.

\* Fox, Act. Mon. p. 95. a fine.

it is not my province to examine, held  
 \* "that if a bishop or priest be in deadly synne,  
 he doth not order, consecrate, nor baptize;  
 † that ecclesiastical ministers should not have  
 any temporal possessions, nor property in  
 any thing, but should begge. ‡ He con-  
 demned lawful oaths, favouring therein, faith  
 Osiander, of anabaptism. He also taught  
 that all things come to pass by absolute ne-  
 cessity." And lastly, he held, as Melancthon  
 termed it, a seditious doctrine, and mother  
 of rebellion; § "That there is no civil ma-  
 gistrates whilst he is in mortal sin, and that  
 the people may at their pleasure correct  
 princes, when they offend." And accord-  
 ing to this principle, Mr. Stowe informs us,  
 || "The favourers of Wickliffe's doctrine did  
 naye up schedules upon the church dores of  
 London, conteyning, that there was a hun-  
 dreth thousand men ready to rise against all  
 such, as could not away with (i. e. follow)  
 their sect."

Used to foment  
 rebellion.

\* Acts & Mon. p. 96. a. Art. 4. b. Art. 15. & Osi-  
 ander Epit. Hist. Ecc. Cent. 9, 10, 11. p. 452. Art. 4.

† Acts & Mon. p. 96. & 93. Art. 12. & Osiander,  
 ubi supra, p. 458. Art. 36.

‡ Osiander, ubi supra, p. 459. Art. 43.

§ Osiander in Ep. Cent. 9, 10, 11, &c. p. 455. Art. 17.

|| Stowe's Annal, &c. p. 550. post. med.

Of these opinions there could but be one true judgment, which Melancthon seems to have very justly expressed. \* *De domino civili sophisticè planè & seditiosè rixatur*; he squabbles about the civil magistrate clearly in a very sophistical and seditious manner. And † *insaniit Wicklevus, qui sensit impios nullum dominium habere*; Wickliffe was mad when he thought, that wicked men could have no property nor power. And lastly, not to tire my readers with redundant quotations, † *Miras tragedias excitavit Wicklevus, qui contendit eos, qui non habent spiritum sanctum amittere dominium, & colligit multas sophisticas rationes ad confirmandum hoc dogma, &c.*; Wickliffe occasioned wonderful tragedies by holding, that those, who were not possessed of the holy ghost (i. e. who were not in the state of grace) lost all right to property or power, and he collects many sophistical arguments to confirm his opinion.

Melancthon's  
opinions of  
Wickliffe's  
doctrines.

Few accounts are, I believe, more variously reported by English historians, than the history of Sir John Oldcastle, who was

Sir John Old-  
castle's history  
often misrepre-  
sented.

\* Met. en Ep. ad. Fred. Miron. in lib. Epistol. Zuinglii & Ecolampad. p. 622. and Osiand. in Epit. Hist. Eccl. Cent. 9, 10, 11, 12. p. 454. Art. 15: & Conc. Const. Sess. 8. Art. 15.

† Barrington's Observations on the Ancient Statutes  
p. 347

the

the great patron, supporter, and the martyr of the Wickliffites, or, as they were in those days generally called the Lollards. Few authors since the reformation give credit to the chroniclers of those times, who being generally monks \* are suspected of partiality. There are however sufficient facts allowed by all historians for us to form an undoubted and unbiassed judgment upon the real cause of his death; and Mr. Stowe, who dedicated his work to the archbishop of Canterbury since the reformation, barring his personal impartiality and credit as an historian, appears from this circumstance to command the belief of all parties, when he speaks of Sir John Oldcastle.

After the relation of the rebellion raised by him and his men in St. Giles's Field, and how many were put to death for the same, he informs us, that Sir John Oldcastle escaped out of prison and lived abroad as an outlaw for four or five years, and after that, † "molesting a great part of England with riding, roving, and spoiling in the absence of *K. Henry*, that was accupied in warres beyond the seas. Whilst these things were in

Sir John Oldcastle's treasonable practices in England.

\* Vid. Barrington's Observations on the Ancient Statutes, p. 347.

† Stowe's An. 5 H. V. p. 570, & seq.

doing

doing (beyond the sea) by the king, the fauourers of *Syr John Oldcastle* beganne to rage in England, who with great profers and promises of money styrred up the Scotts to invade the realme in the king's absence, affirminge the same would be easily wonne. And it was said, that *Syr John Oldcastle* talked with *William (Douglass)* the Scott, at *Pomfrett*, promising him a great summe of money to persuade the people to come with him, and to bring with him, him who was falsely called *K. Richard* the II. and to set him up as king. Also indentures and other wrytings were found, made betwixt *Syr John Oldcastle* and the *Duke of Albany* in Scotland, wherein the Scotts were inuited to beseege *Rookeſborow* and *Barwicke*, &c.

“ Towards the end of the yeare 1417 *Syr John Oldcastle* was taken by chance in the territory of the *Lord Powesse* neere the borders of *Wales*, not without danger and hurt of some, that tooke him; neyther could he himselfe be taken before he was wounded. He was brought up to *London* in a litter wounded during the parliament, and there examined. As soone as *Syr John Oldcastle* was brought into the parliament before the king's brother, the duke of Bedford, regent and gouernour of the realme, and the other states,

*Sir John Oldcastle taken prisoner.*

Questioned in  
parliament up-  
on his treason.

states, his indightment was read before him, of his forcible insurrection against the king in *Saint Gyles Field*, and other treasons by him committed. The question was asked, how he would excuse himselfe, and shew why he should not be deemed to dy? But he seeking other talke, began to preach of the mercyes of God, and that all mortall men, that would be followers of God ought to preferre mercy aboue judgment. And that *vengeance pertyned only to the Lord, and ought not to be practised by them, that worshipped God, but to be left to God alone.* With many other words to detract tyme, untill the cheefe justice admonished the *regent* not to suffer him to spend the tyme so vaynely, &c. But he again began to talke nothing to the purpose, untill the cheefe justice commaunded him to answer finally, why he should not suffer death. To which he stoutly answered, that he had no judge among them, so long as his liege lord *K. Richard* was aliue, and in the realme of Scotland. Which answer when he had made, because there needed no further witnesse, he was condemned to be drawne and hanged upon a gallows, and to be burned hanging upon the same. Which judgment was executed on him on the 14th of December, in *Saint Gyles Field*. Where many honorable

Condemned as  
a traitor.

honorable persons being present, the last words, that he spake was to *Syr Thomas Erpingham*, adjuring him, that if he saw him rise from death to life againe the third day, he would procure that his sect might be in peace and quiett."

It cannot certainly appear strange, that Sir John Oldcastle holding the doctrines I have before mentioned, should act in a seditious and treasonable manner towards his sovereign. I forbear to mention many instances of such attempts, which are related by contemporary authors, for the reason I have before alluded to. No doubt nor question can however be raised against the authenticity of the record; for if it were not perfectly authentic, it may be fairly concluded, that (particularly considering its tendency) Sir Robert Cotton would not have included it in his collection, nor would Mr. Prynne, that still more noted republican, have published it in his abridgment of these records of the tower. \* "On Tuesday the 18th of December, and the 29th day of this parliament, *Sir John Oldcastle*, of *Cowling*, in the county of *Kent* knight, being outlawed upon treason in the King's Bench, and excom-

Record for his  
execution for  
high treason.

\* Cot. Abridgment of the Records of the Tower, revised, &c. by William Prynne, 5 H. VI. p. 553, 554.  
municated



municated before the archbishop of *Canterbury* for heresies, was brought before the lords, and having heard his said conviction, answered not thereto in excuse; upon which record and proceſſe it was adjudged, that he should be taken as a traitor to the king and realm; that he should be carried to the tower of *London*, and from thence drawn through *London* to the new gallows in *St. Gyles*, without Temple-barr, and there to be hanged and burned hanging. The record out of the King's Bench is at large, the effect whereof is, that the said *Sir John Oldcastle*, and others, to the number of twenty men, called *Lollards*, at *St. Gyles* aforesaid, did conspire to subvert the state of the clergy, and to kill the king, his brother, and other nobles. The archbishop of *Canterburies* instrument for his excommunication is there also at large."

It is to be collected from facts, that notwithstanding the severity and rigour of those times, which even produced the infamous statute *de heretico comburendo* (afterwards repealed by the 29th of Car. II.) our ancestors proceeded capitally against *Sir John Oldcastle* (sometimes called *Lord Cobham*, on account of his being in right of his wife the lord of the manor of *Cobham*) and his associates, not for their speculative errors in  
faith,

faith, which they adjudged heresies, but for their seditious and treasonable practices against the state. For though they made heresy capitally criminal, they did not make it treason. So whether John Wickliffe himself had art enough to elude the rigorous jurisdiction of his day, or by a prevaricating recantation of his doctrines, disarmed the severity of the laws, true it is what Mr. Fox says of him.

\* “ This martyr was never put to death, nor yet so much as imprisoned for his religion, but died in his bed at his benefice of Lutterworth, in Leicestershire, upon the yeare heere noted.” But the nature of his doctrines, more than the example of the teacher, produced after his death the most fatal disasters to the state. Besides the rebellion of Sir John Oldcastle and his adherents in our own country, when John Wickliffe was in Bohemia, he made a profelyte of the noted John Hufs, and he with his colleague Hierom of Prague, so firmly rivetted these seditious doctrines of their master John Wickliffe in thir followers, that for upwards of twenty years together they carried on with an army of forty thousand men a rebellious war against their lawful sovereign,

John Hufs, a disciple of Wickliffe, in open rebellion against his lawful sovereign the emperor.

\* Fox's Calendar, 2 January, 1387, *John Wickliffe, Preacher, Martyr.*

and

and that the most bloody, cruel, and inhuman war, that ever disgraced any nation. So very *inveterate* was their general Zisca against the emperor, his lawful sovereign, that when he died he directed his skin to be properly dressed for covering a drum, that should beat up his followers for ever against their imperial sovereign.

Anti-basilican  
school of  
Geneva.

The next set of systematic levellers, who have deluged this unfortunate island with blood, and stained it with inexpressible infamy, appear to have imbibed their levelling principles from the *antibasilican* school of Geneva. It will be proper to examine the poisonous scyon, before it be engrafted upon a British stock; thus will the fruit be surely known.

Pallacious practice of applying the scriptures.

When ignorance has blunted, or artifice has inveigled, or malice has seduced the mind and heart, the most general propositions from the highest authority are the constant weapons both of defence and offence; the scriptures become tortured into all imaginable shapes, like a pliant garment, that every one thinks purposely fitted to himself. For when religion is made the cloak for covering interest, pleasure, or ambition, the holy scripture will always supply the venerable materials, of which it will be made up. I am aware,

aware, that the application of the same text or position even by the same person at different times, and under different circumstances, may in its tendency and effect, go the whole extent of the difference between loyalty and treason. I shall not therefore attempt to affix a determined sense, intention, and application of treason to any general abstract proposition; but I cannot help considering some positions or doctrines in the whole context of circumstance, time, and person, as the causes of the effects, which I lay before my readers. It is a metaphysical truth, that an effect cannot exist without a cause; and it is a moral truth, that every cause of every effect cannot be always known to every person. Suffice it for the object of my illustration, that the theory I lay down be likely to have produced the practices I disclose. I aim not at ingenuity in affixing a treasonable import to an innocent proposition, nor do I affect the latitudinarian liberality of acquitting every doctrine of sedition and disloyalty. Constructive treasons are little congenial with the spirit of the British constitution.

Constructive  
treason uncon-  
stitutional.

It becomes a serious obligation upon government to be unusually vigilant over the actions of those, who delight or glory in principles and doctrines, that appear innoxious,  
but

Loyalty open  
and candid,  
treason dark  
and uncertain.

but by the laboured efforts of constructive lenity. The openness of loyalty is as essentially free from ambiguity and uncertainty, as the designs and spirit of the traitor are perplexed with doubt, and masked with plausibility. Neither rule nor instruction can be settled for the sure interpretation of abstract and general positions. The most constitutional passages from Bracton and Fortescue might admit of a very seditious and disloyal construction if transplanted into Buchanan or Milton, and the most exceptionable propositions from the latter might wear every appearance of truth and loyalty in the works of the former.

Zuinglius le-  
velling doc-  
trines.

Zuinglius may be properly called the father of this levelling seminary of Geneva,  
\* “ *Reges* (saith he) *quando perfidè, & extra regulam Christi egerint, possunt cum Deo deponi, &c.* ; kings may be deposed where they advance ungodliness. † *Permittendum* (saith he) *est Cæsari officium debitum* ; we must suffer ourselves to pay a duty to *Cæsar* ; but upon this condition, *si modo fidem nobis permittat illibatam ; si nos illud negligentes patimur, neglectæ religionis rei erimus* : if he will suffer us to enjoy our own religion, as we

\* Philanax Anglicus, p. 3. & seq.

† Lib. iv. p. 868.

will have it; otherwise, if we should be so negligent as to suffer him, we shall be guilty of abandoning religion itself. Thus they will be pleased to obey Cæsar, if Cæsar will be advised and directed by them; otherwise they have another course to take with him, they will talk with him to the purpose; but yet he will explain his meaning further, and more fully to us in his epistle *Ad Ulmenfes*, whom he admonisheth, *Ut coram auditoribus suis sensim incipiant detrahere personam imperio Romano, quomodo stultum sit agnoscere hoc imperium in Germaniâ, quod non agnoscitur Romæ, unde nomen habet*: and again, *Nimis amantes estis rei Romanæ; quid Germaniæ cum Roma? Sed prudenter & paulatim agenda sunt hujusmodi, atque cum paucis, quibus credere possis, &c.*; that they should by little and little, in their congregations, unmask the usurpation of the *Roman Empire*, and shew them how ridiculous a thing it is to acknowledge that empire in *Germany*, which is not acknowledged at *Rome* itself, from whence it hath its denomination. He tells them further, that they ought not to be so fond of the *Roman government*—what had *Germany* to do with *Rome*? But yet this kinde of doctrine must be instilled by degrees, and the business cunningly carried before a few first, that may be trusted,

Subversive of  
their lawful  
government.

trusted, &c. Who is now so blinde as not to see how this wicked *Swiss* labors to undermine all monarchy, and to blow up the *Roman* Empire with his breath! And how craftily the business must be carried, *senſum & paulatim*, not openly and plainly, nor all at once; no, by no means; *et coram audientibus*, pure doctrine for a pulpit, a most rare sermon to the people, who are most likely to applaud it.

Their doctrines upon state points, not upon faith, to be examined.

“ Their school points and doctrines of faith I shall leave to the examination of the more learned, intending only to deliver to the world their doctrines, problems, and paradoxes in points of state, and to demonstrate to the world how much their refined reformation doth derogate from the royalty and sovereign authority of Christian kings and princes, and how much it is more favorable to democracy and popular government, as more consonant to their consistory and eldership, whereby they have wrought such horrid confusions over the face of Christendom, and yet truly we may finde *Calvin* go as slyly and considerately to work as the other, and by certain degrees too, nor altogether so bluntly as the rude *Swiss* before him did. First he goes about to commend aristocracy, and labors to abuse monarchy to the

the height, and all that to prefer the reputation of his consistory and sanhedrim, as you shall hear him speak for himself in his artificial instructions, \* *Non id quidem per se, sed hominum vitio.* Mark his cunning; not that aristocracy were naturally; and of itself better (no, by no means, things were not ripe for that yet) but through the vices and deficiencies of men; why this one would think to be pretty plausible; but mark his reason, *Quod rarissime contingit reges sibi moderari, deinde tanto acumine & prudentiâ instructos esse, ut unusquisque videat quantum satis est.* So he makes it very rare and dainty to finde a wise and temperate prince, or almost impossible for a king to see sufficiently into his affairs; and therefore concludes, *Facit ergo hominum defectus, ut tutius sit ac magis tolerabile, plures tenere gubernacula.* So his reason proceeds upon the defects of princes, and maintains it to be more safe and tolerable for many joyntly, than for one absolutely to govern and command; and concludes with an ingenuous confession, *Atque ut libenter fatear, nullum esse gubernationis genus isto felicius;* that no kinde of government can be happier than that; now the effects of that

Calvin's anti-monarchical principles.

\* Calv. Inst. b. iv. c. 20. v. 10.



doctrine do most plainly appear by that popular state, yet governed *aristocratically*, as *Bodin* very well observes, established by him in the city of *Geneva*, after the ejection of the bishop, who was their lawful prince, as his predecessors had long before him there enjoyed it, since *Frederick* the First. So those were the first fair fruits of the prorogation of his gospel there.

“ Now after all this, to prevent that any man should object, that princes have always grave and wise counsellors about them to advise with, and to inspire them; and if they should be so weak themselves, as he imagines them to be, yet so their defects might be supplied, he gives this resolution in his comment upon *Daniel*, \* *Kings* (saith he) *make choice of such men for their counsellors, as can best fit their humours, and accommodate themselves best to serve their bestial lusts and appetites*, instancing particularly in *cruelty, fraud, and rapine*. So he makes kings rather worse than better for having counsellors, and consequently staineth the honor and credit of a counsellor with a scandal and blemish intolerable.

“ And yet a little further upon the same book

\* *Cap. iv. v. 26.*

of Daniel, \* *They are (saith he) strangely out of their wits, quite voide of sense and all understanding, who desire to live in soveraign monarchies ; for it cannot be, but that order and policy should decay, where one man holds so large an extent of dominion.* Nay, to make this impious proposition seem good, he addes in the same book thus, † *Kings (saith he) forget that they are men, that is, of the same mould that others are : they are called kings and dukes, Dei gratiâ ; to what end serve these words ? To shew by their title, that they acknowledge no other superior ; and yet they will tread upon God with their feet under that cloak : so it is but a mere abuse and blinde to disguise and conceal their wicked designs, when they vaunt that they reign Dei gratiâ.* Is not this a most excellent doctrine to be preached in a monarchy ? and a very fine descant upon *Dei Gratia* ?

“ Yet he goeth a little further in the same book, † *Kings (saith he) make their boast, that they reign Dei gratiâ, yet they indeed despise the majesty of God ; voila quelle est la rage & forcenerve de tous Roys ; that is to say, Observe here the rage, fury, and phrensie, of all kings, none excepted ; and to make that*

\* Cap. ii. v. 39.

† Cap. v. v. 25.

† Cap. v. v. 21.

good, he addeth this strength to it. *It is common and ordinary to all kings, to exclude God from the government of the world. May we not here truly say of him, and the rest of his reforming brethren, Plusquam regnare videntur, quibus ita licet censuram agere regnantium.* They are sure more than kings who thus imperiously dare pass their censures upon kings.

“ But yet if you have a minde to hear *John Calvin* preach more like a *Switzer*, see what he says further upon the same book of *Daniel*.  
 \* *Darius* (saith he) *will by his example condemn all those, who at this day profess themselves either catholick kings, or Christian kings, or defenders of the faith, and yet not onely do they deface and bury all true piety and religion, but they corrupt and deprave the whole worship of God.* This is not yet all neither; for in the same chapter he is bold to touch kings a little more to the quick, and curiously describes what kinde of beasts they are generally; † *Les Roys sont presque tous bebetex & brutaux, aussi semblablement sont ils coment les chevaux & les asnes de bestes brutes; kings are for the most part stupid and brutish, nor liker any brutes upon the earth, than hack-*

\* Cap. vi. v. 25.

† Cap. vi. v. 3, 4.

ney jades and asses. Fitting titles for the majesty of God's anointed. At length to crown all, that he hath said or done in this point, he turns his tune to sharpes and menaces in this brave manner: \* *Abdicant se potestate terreni principes, dum insurgunt contra Deum, imo indigni sunt qui censeantur in hominum numero: potius ergo conspuere oportet in illorum capita, quam illis parere, ubi sic proterviunt, ut velint spoliare Deum suo jure;* earthly princes (saith he) devest themselves of power, when they make an insurrection against God; nay, they are unworthy to be reputed amongst men; men had better therefore spit in their faces, then yield obedience to their commands, when they shall grow so insolent, as to rob God of his right. Is not this a most rare and learned homily of obedience for subjects?

“Now enter the *Fibullus* of Geneva, sweet M. *Theodore Beza*, and by his opinions and practices it will be more easily made appear, that it was his master *Calvin's* not onely opinion, but design to make all the world dance the Geneva jig, and to propagate his godly government throughout all Christendom; for he was both his disciple and companion, who

Beza, Calvin's  
disciple and  
friend.

\* Cap. vi. v. 22.

soundly did understand his doctrine, and did as bravely second him; so we know, that *notitur ex socio, &c.* But to know this gentleman in his proper humor, and in *puris naturalibus*, read but his positions, and catechism of sedition, the practice of his piety, the book called \* *Vindiciæ contra Tyrannos*, where he acts the perfect part of *Junius Brutus*: and first, page 15, he propounds this question; *If subjects be bound to obey their kings, when they command against God's law?* And then, page 22, he resolveth, † *we must obey kings for God's cause, when they obey God*: and then concludes, page 24, ‡ *As the vassal loseth his fief, if he commit felony, so the king loseth his right, and his realm also, if he forsake God.* But above all, the bravest maxime he produceth, page 65, § *That all conspiracies are good or ill, as the end is, at which they aim*; which is a most diabolical principle, and capable to maintain all the rebels and traytors in the world. Yet, page 66, he goes a little further, || *The magistrates (saith he) and one part of the realm, may resist the king, being an idolater; as Libna revolted from Joram, for*

His doctrines of  
kingly power.

\* Vind. cont. Tyran. p. 15.

† Ibid. p. 22.

‡ Ibid. p. 24.

§ Ibid. p. 65.

|| Ibid. p. 66.

*for saking*

*forfaking of God.* Here he gives all rebels a *sic dicit dominus* for their defence.

“ I cannot here forget how irreverently this *Eusebius Philadelphus*, (for so Mr. *Theodore Beza* was pleased there to call himself) did use his own king *Charles* in his book, intituled, \* *Reveille Matin*, where he usually calls the king tyrant, and makes this anagram *Chasseur desloyal*. Read his rimes and scandalous reproaches against the queen mother ; peruse the † forty articles recorded in that book, for the better advancement of seditious and rebellious government ; and in the last of them they are obliged never to disarm, so long as religion, as they call it, is pursued and prosecuted ; that is, according to his meaning, so long as the king goes about to chastise their rebellion.

“ It were too much to trouble my ingenuous reader with all those holy † articles of *Bearne*, 1574, coyned with Mr. *Theodore's* own stamp, and communicated at *Melun*, to all the *mosches* of the *French* church, that they might the more strongly, as they said, make war against their enemies, till it pleased God to turn the heart of the *French* tyrant. By all this it must be very evident, that *Beza* and

\* *Reveille Matin*.

† Art. 49.

‡ Articles of *Bearne*.

His rebellion  
against his law-  
ful sovereign.

his followers have caused all those uproars and commotions in France, when he himself writing to *Christopher Thretius*, speaks his resolution to fight it out to the very last :  
\* *Ego equidem pacem nullam, nisi debellatis hostibus ausim sperare* ; he could hope no peace, till the enemies were quite subdued.

Dr. Sutcliffe's  
condemnation  
of Beza's doc-  
trines.

“ I might here travel a great way further, and weary you with as good stuff out of the book † *De Jure Magistratus*, a bird of the same nest ; for if it was not *Beza's* own, as most think it was, it must needs be *Ottoman's*, one of his chief comrades. ‡ But Dr. *Sutcliffe* a countryman of ours, and very near of the same sect, confesseth the book to be *Beza's*, and saith, that *Beza* in his book *De Jure Magistratus* doth too much arm subjects against their princes, and blameth him for going about to overthrow the authority of all Christian kings and magistrates.

Baldwin con-  
demns Calvin's  
and his dis-  
ciples zeal  
against their  
lawful govern-  
ers.

“ To Dr. *Sutcliffe* may be added, the judgment of that famous lawyer § *Francis Baldwin*, who had particularly conversed with *Calvin* at Geneva, in his book called *Responsio altera ad Johannem Calvinum*, Paris

\* Epist. 40. Christoph. Thretio.

† Lib. de Jure Magistratus.

‡ Dr. Sutcliffe.

§ Francis Bald. Resp. alt. ad. Joh. Calv. p. 74.

1562, p. 74. *Mirabar quorsum evaderet inflammatus tuus quidem apostolus* (sc. Mr. Theodorus Beza) *qui cum hic concionaretur, suis auditoribus vehementer commendabat extraordinarium illud exemplum Levitarum, strictis gladiis per castra discurrentium, & obvios quosque idolatras trucidantium; sed nunc audio te, vix contentum esse talibus Levitis.* \* And p. 128, *Leviora* (saith he) *sunt illa; cum statuis, sepulchris, & ossibus principum ac martyrum, barbarum bellum indictum videmus, cum civitates occupari, fana spoliari audimus, &c.* I wondered, saith he, what your fierce apostle meant, and whither he would (by name Mr. Theodore Beza); who, when he preached here did most extreamly recommend to his auditory that extraordinary example of the *Levites* running through the camp with their drawn swords, and killing all the idolaters they met withal; but now I hear, that you are hardly contented with such moderate *Levites*, &c. And then in p. 128. Those are small matters (saith he) to what we hear and see now: a barbarous war is waged with the statues, sepulchres, and bones of kings and princes, nay and of martyrs. Cities are

\* Francis Bald. Resp. alt. ad Joh. Calv. p. 128.



seized on by force, churches prophaned and spoiled, &c.

“ And Dr. Sutcliff adds yet further, that that book of *Vindiciæ contra Tyrannos* gives a power to subjects not onely to resist, but to kill their kings, if they impugne God’s religion, of which and all their other misdemeanors, they must be the onely judges, as it is fit they should be.”

Origin of anabaptists.

By way of prelude to the levelling scenes exhibited in this island, it will not be improper to introduce to my readers that *arch-leveller* Muncer with his church militant of anabaptists. The peculiarity of these sectaries did not so much consist in any new formula of faith or doctrines, as in an external show of humility, rigor, and mortification. So † “no marvel was it to see them every day broach some new thing not heard of before; for they interpreted that restless levity to be their growing to spiritual perfection, and their proceeding from faith to faith.”

\* Had not Baldwyn written, and printed these letters, in 1562, it might naturally have been supposed, that he was describing the scenes acted upon our own theatre, between eighty and ninety years after that time; so true is it, that similar causes produce similar effects.

† Guy de Bres *Erreurs des Anabaptistes*, p. 27.

“ But

\* “ But these men, in whose mouths at the first sounded nothing, but mortification of the flesh were come at the length to think, they might lawfully have their six or seven wives a piece. They, who at the first thought judgment and justice itself to be merciless cruelty; accounted at the length their own hands sanctified with being imbrued in christian blood. They who at first were wont to beat down all dominion, and to urge against poor constables kings of nations, had at length both consuls and kings of their own erection amongst themselves. Finally, they who could not brook at first, that any man should seek, no not by law the recovery of his goods injuriously taken, or withheld from him, were grown at the last to think, they could not offer unto God more acceptable sacrifice, than by turning their adversaries clean out of house and home; and by enriching themselves with all kind of spoil and pillage.

*Their doctrines and practices.*

“ For a further character of them, *Sleidan* tells us, that *Muncer*, by his new doctrine touching goods to be in common, incited\* the boores of *Franconia* and *Turingen* to undertake the holy-war (as he called it) against

*Their levelling principles.*

\* Dugdale's Short View of the late Troubles in England, c. i. p. 5, & seq.

their

their princes ; telling them, that he was commanded of God to destroy all wicked princes, and substitute new ones in their places ; and that they were called indeed princes, but were tyrants. Moreover, that they would not restore unto the people their liberty, nor permit them to have the true religion and service of God ; exhorting them rather to dye, than to allow their wickedness, and suffer the doctrine of the gospel to be taken from them ; and therefore to play the men, and gratify God, in destroying such unprofitable people.

“ Likewise, that this their great zeal towards God, and outward humility, got them in the beginning many followers ; for their demands were first, that they might choose them such ministers, as should preach God’s word sincerely, without any mixture of men’s traditions. Secondly, That thenceforth they would pay no tythes, but of corn only ; and the same to be distributed by the discretion of good men, partly to the ministers of the church, partly upon the poor, and partly upon common affairs. Thirdly, That they had till that time been unworthily kept in bonds, considering how they were all made free in the blood of Christ. Fourthly, That they refused not to have a magistrate, know-  
ing

ing that he is ordained of God, and would obey him in all honest things ; but could not abide to be any longer bound, unless it were shewed reasonable by the testimony of scripture. \* Fifthly, That in all their letters, which they wrote to provoke and allure others to their fellowship, they made their boast, that they took up arms by God's commandment, and for a certain love and zeal to the common-wealth, to the intent the doctrine of the gospel might be set forth, augmented, and maintained. And Sixthly, That truth, equity, and honest living might reign and flourish ; as also, that they might so provide for them and theirs, that thenceforth they should not be oppressed with any violence.

*Their specious and hypocritical grounds for rising.*

“ And that when they had thus at few words declared the cause of their enterprize, they would then command their neighbours to arm, and come unto them immediately, and help them ; if not, then would they threaten to come upon them with all their force. † But having gotten the power and arms into their hands, they committed divers horrid outrages ; insomuch as *Luther* exhorted all men, that they would come to destroy them as wicked thieves and parri-

*Luther's judgment of the anabaptists of his days.*

\* Lb. f. 63.

† Lb. f. 64. b. & 65.

cides, in like case as they would come to quench a consuming fire, having most shamefully broken their faith to their princes, taken other men's goods by force, and cloak all this abomination and wickedness with the cover of Christianity, which, faith he, is the vilest and unworthiest thing, that can be imagined.

“ In *Suevia* and *Franconia*, about forty thousand peasants took arms, robbed a great part of the nobility, plundered many towns and castles, *Muncer* being their chief captain; so that the princes of the empire, *Albert* count of *Mansfield*; *John* duke of *Saxony*, and his cousin *George Philip* the landgrave of *Hesse*, and *Henry* duke of *Brunswick*, were necessitated to raise what power they could; and having offered them pardon upon submission, and delivering up their principal leaders, which was refused, marcht against them. \* But *Muncer* preparing for battel, encouraged his followers, crying out to them to take their weapons, and fight stoutly against their enemies, singing a song, whereby they called for help of the Holy Ghost. † The success of which battle was, that the

*Muncer* defeated in open rebellion, taken, and beheaded.

\* *Sleidan's Com.* f. 57.

† Thus did the rebels here in England at the last battle of *Newbery*, 27 Oct. 1644.

rebels at the first onset were soon put in disorder, and above five thousand slain on the place; and that *Muncer* fled and hid himself; but being found and brought to the princes, was (with his fellow *Phifer*) beheaded at *Mulbuse*.

“ And about the year 1535, \* *John of Leyden* (a taylor by trade and of this tribe) preaching the doctrine of *Rebaptization*, so much infected the inferior sort of people by the means of private conventicles, that his followers grew numerous, and exercised violence against those, that were not of their sect. At last robbing their adversaries, and gathering together in great troops, they possess themselves of the strongest part of the city of *Munster*, declaring, that all such, as were not rebaptised ought to be accounted pagans and infidels and to be killed. His companions were *Rosman* and *Cnipperdoling*, who gathered together to that city great numbers of the base sort of people, and seeing their strength, chose new senators of their own sect, making *Cnipperdoling* the chief, † who taught, that the people might put down their magistrate. And albeit that

*John of Leyden* revives the sect.

\* An. 1535.

† Sleidan ut supra, lib. i. f. 131. b.

the apostles had no commandment to usurp any jurisdiction, yet such as were their ministers of the church ought to take upon them the right of the sword, and by force to establish a new common-wealth. Hereupon they spoiled the suburbs, and burnt the churches; so that the bishop of *Munster* (who was lord of the city, and forced-out) besieged them; the neighbour princes giving assistance; which siege continuing long, the famine grew to be such, as that the besieged miserably perished in great numbers; and at length the besiegers forcing their entrance by assault, slew many, took the ring-leaders, and having put them to death, hanged their bodies in several cages of iron, on the highest towers of that city. Thus far *Skeldon*.

**Roundheads.**

“It is not unworthy observation, that divers of these *German* phanatiques, to the end they might at that time be the better known to those of their own sect, did cut their hair round, as *Petrus Crinitus* (an author of good credit) in his book *De Bello Rusticano*, tom. 3. p. 209. avereth; \* from which example there is no doubt, but that these or ours took their pattern, whence they were generally called *roundheads*.

\* *Agmen tonsile a rotunde detonsis capitibus.*

There

“ There is an undoubted tradition, that upon the suppressing of this pernicious sect in *Germany*, many of them fled into the *Netherlands*; and that thence two ships laden with some got into *Scotland*, where they first propagated their mischievous principles; which within a short time spreading hither have not a little endangered the utter ruin of church and state: for that they soon after arrived here to a considerable increase.”

Anabaptists  
went over to  
Scotland.

The first lesson from Geneva, which seems to have been practised in our island, was,  
\* “ That if kings and princes refused to reform religion, the inferior magistrates or people by direction of the ministry might lawfully, and ought, if need required, even by force and arms to reform it themselves.”  
Accordingly † “ certain ‡ ministers in Scotland with their adherents (being meer subjects) have taken upon them of later years, by a violent and forcible course to reform religion.

“ In which course Mr. *Knox*, a man trained up in Geneva in the time of *Mary* queen of

John Knox  
trained up in  
Geneva.

\* Whittingham's Preface to Goodman's Book.  
Knox.

† Archbishop Bancroft's Dangerous Positions, c.  
iii. p. 10. & seq.

‡ Knox in his History of the Church of Scotland,  
p. 213;



*England*, and very well instructed for such a work, did shew himself to be a most special instrument, as it appeareth by a very strange letter written by him from *Dieppe*, Anno 1557; wherein he sheweth, that his opinion and notion of that matter was not grounded only upon his own conceit, but upon the grave counsels and judgments of the most godly and learned, that then lived in *Europe*; (he meaneth the *Genevians*, *Calvin* and the rest there). Upon this letter and some other, to and from the said *Knox*, an † *oath of confederacy* was taken amongst his followers in *Scotland*; and a testification was made of their intents by a kind of subscription.”

John Knox and his followers assume the sovereign power.

Immediately after they prescribed also † “orders for reformation to be observed through all that whole realm Anno 1558; and writ § a memorable letter to the religious houses, in the name of the people, that they should either *remove* thence by such a day, or *they would then eject them by force*.

“Shortly after, (a *parliament* being there holden by the *queen regent*) they || *protested* to the same, that except they had their desire, &c. they would proceed in their course; that

\* Knox, p. 213. *ibid.*

† Ditto, p. 217.

‡ Ditto, p. 218.

§ Ditto, p. 234.

|| Ditto, p. 256.

neither they nor any, that joyned with them, should incurr therefore any danger in life, or lands, or other political pains; and that if any violence happened in pursuit of those matters, they should thank themselves. Afterward the queen regent seeing all the disorder, that was then, proceeded from such of the ministers she \* summoned them to have appeared at *Striveling*: which they refused to do; and were thereupon by the queen's commandment (as it is there termed) put to the † horn; and all men (under pain of rebellion) were inhibited to *assist* them. But this notwithstanding their friends did stick unto them: and presently after, upon a sermon to that purpose preached by Mr. Knox in † *St. John's Town* for the overthrowing of religious houses, they fell the same day to work, and within two days had quite destroyed § and raised in that town the houses of the *black-fryers*, of the *grey-fryers*, and *charter-house monks* down to the ground; and so they || proceeded, breaking down images and altars, in *Fife*, *Angus*, *Mernes*, and other parts adjoining.

Their resistance  
against the  
powers in  
being.

“ This course being done, and thereupon

\* Knox, p. 258.

† Ditto, p. 26.

‡ Holinshed, p. 366.

§ Knox, p. 263.

|| Thynne. p. 366. Buchanan.

the said *queen* threatening to destroy *St. John's Town*, they \* writ unto her, affirming, that *except she stayed from that cruelty, they should be compelled to take the sword of just defence*; and protested that without the reformation, which they desired, *they would never be subject to any mortal man*. Then they † writ to all their brethren to repair unto them; likewise to the nobility upon pain of ‡ excommunication to joyn with them; saying, that it was their duty to *bridle the fury and rage of wicked men, were it of princes, or emperours*. Knox, page 269.

“ Upon these letters divers § repaired to *St. John's Town* from sundry places; inso-much as when *Lion Herald* in his coat-armour, commanded all men under pain of treason to return to their houses by publick sound of trumpet in *Glasgow*, never a man obeyed that charge, but went forward to their associates. They || writ in like manner to the bishops and clergy, that except they desisted from dealing against them, they would *with all force and power, execute just vengeances and punishment upon them*; and that they would begin that same war, which God commanded *Israel* to execute against

Their threats  
against govern-  
ment.

\* Knox, p. 262.

† Ditto, p. 268.

‡ Ditto, p. 272.

§ Ditto, p. 274.

|| Ditto, p. 275.

*the Canaanites. This manner.\* of proceeding they termed to be the resisting of the enemy. After (upon conditions with the queen) this great assembly at St. John's Town departed thence; but before the severing of themselves, they entered into a † league by oath, that if any one member of their congregation should be troubled, they should all con-  
curr, assist, and convene again together, for the defence of the same.*

“ Presently after (upon a new quarrel against the queen's dealing) another concourse was made of these reformers † at St. Andrews, where, by Mr. Knox's persuasions in his sermon, they made the like havock, that was before at St. John's Town, and did cast down, spoil, and destroy both the houses of the fryers and the abbeyes in that town. So dealt they also within a very short time with the abbey of § Scone, the fryers at Strive-  
ling, at Lithgow, and at Endenburgh; the queen || being fled thence for fear. *They kept the field\*\* two months, and took away to them-  
selves \*† the coining irons (being, as the queen alledged, a portion of the patrimony of the*

They are in open rebellion.

\* Knox, p. 276.

† Ditto, p. 283. Thynne, 367.

‡ Ditto, p. 288.

§ Ditto, p. 298, 299.

|| Ditto, p. 300.

\*\* Ditto, p. 306.

\*† Ditto, p. 308.

crown) and \* justified the same. They † entered into a league, that though *the queen sent for them*, they would never come to her another time *without consent of their company*.

Their insolent  
behaviour to  
their sovereign,  
and renuncia-  
tion of their al-  
legiance.

“ After the † *queen regent* made a proclamation of her desire of peace, and that the state of the realm might at the last be quiet ; but they § confuted it, and did animate those of their faction (with all their might) to be always ready, and to stand upon their guard. They gave the queen *the || lye* divers times, and used her with most despiteful speeches ; and at the length they came to that boldness, as that they termed the *queen's party* \*\* a faction, and renouncing their obedience unto her, protested, that whosoever should take her part, *should be punished* as traitors, *whenever God should put the sword of justice into their hands*.

They depose  
the queen their  
sovereign.

“ Within a while \*† after they consulted with their ministers, especially Mr. *Wilcocke* and Mr. *Knox* for the deposing of the *queen regent* from her government, who assuring the rest *that it was lawful for them so to do*, process was made, sentence was given, and she was \*† deprived from all regiment, by a

\* Knox, p. 308.

† Ditto, p. 300.

|| Ditto, p. 468.

\*† Ditto, p. 372.

† Ditto, p. 317.

§ Ditto, p. 364.

\*\* Ditto, p. 333.

\*† Ditto, p. 378.

formal act, which is set down in the same story penned by Mr. *Knox*, and in some part printed after in *England*.

“ Not long after this, the *queen regent* dieth; and then they had a *parliament* by the consent of the *French king*, and their queen his wife. In that \* *parliament* held *Anno* 1560 they reformed religion, and set out a *confession of the Christian faith*; but the said king and † *queen* denied to confirm or to ratify the acts thereof, when they were moved thereunto; which thing (said the confederates, upon intelligence given them) we little regarded, or yet do regard; for all, that we did was rather to shew our dutiful obedience, than to beg of them any strength to our religion.

Their conduct to their new sovereign.

As *Knox* and *Buchanan* were the principal engineers in erecting the kirk of Scotland with the hallowed materials they had brought from Geneva, so I shall expect to disclose their true spirit more effectually by collecting from their own words the principles of their actions, than by following them through each scene of their edifying undertaking †. Some of those sanctifying precepts were

*Knox* and *Buchanan* the chief founders of the kirk.

\* *Knox*, p. 468.

† Ditto, p. 500.

‡ The present civil establishment of the presbyterian religion in Scotland is as much to be respected and submitted to, as any other such establishment elsewhere.

were delivered as exhortatory inducements to undertake, others as justificative apologies for having accomplished the glorious work of their mission.

The principles of their actions.

\* Reformation † of religion doth belong to more than the clergy and the king.

Noblemen ‡ ought to reform religion, if the king will not.

Reformation § of religion belongeth to the commonalty.

The commonalty, || concurring with the nobility may compel the bishops to cease from their tyranny.

The \*\* commonalty by their power may bridle the cruel beasts (the priests).

The \*† commonalty may lawfully require of their king to have true preachers; and if he be negligent, they justly may themselves provide them, maintain them, defend them against all, that do persecute them, and may detain the

elsewhere. The majority have concurred in that form of worship, and the state therefore has given civil sanction unto it. The anticonstitutional state principles of Geneva, with which some individuals were infected, ought to be viewed separately from the spiritual principles and doctrines upon which the presbyterian religion is founded.

\* Knox, p. 216.

† Ditto, p. 216.

‡ Ditto, Appel. fol. 25.

§ Ditto, to the Commonalty, fol. 49, 50.

|| Ibid. fol. 47.

\*\* Ibid. fol. 55.

\*† Ibid.

profits of the church-livings from the other sort.

“ God hath \* appointed the nobility to bridle the inordinate appetites of princes ; and in so doing they cannot be accused as resisters of authority.

“ It is their † duty to repress the rage and insolence of princes.

“ The ‡ nobility and commonalty ought to reform religion, and in that case may remove from honours, and may punish such, as God hath condemned, Deut. 12. (he meaneth idolaters, &c.) of what estate, condition, or honour soever.

“ The § punishment of such crimes as touch the majesty of God, doth not appertain to kings and chief rulers only, but also to the whole body of the people, and to every member of the same, as occasion, vocation, and ability shall serve, to revenge the injury done against God.

“ The people § are bound by oath to God, to revenge (to the utmost of their power) the injury done against his majesty.

“ The cruel murdering of the archbishop

\* Knox's History, p. 343.

† Ditto Appel. fol. 33.

‡ Ditto, ditto, ditto, 28, 30.

§ Ditto, ditto, ditto, 30.

§ Ditto, ditto, ditto, 35.



*Of the Attempts and Effects of*

St. Andrew's in his bed-chamber, A. D. 1545, by three private gentlemen, *because* (as they told him) *he had been, and so remained, an obstinate enemy to the \* gospel, is sought to be justified to be a godly act; and encouragement is given for others in the like ease to commit the like outrage."*

*Penes † populum est, ut leges ferat: sunt reges veluti tabulariorum custodes. The making of laws doth belong to the people; and kings are but as keepers of the records.*

*The people ‡ have the same power over the king, that the king hath over any one man.*

*"It were || good that rewards were appointed by the people, for such as should kill tyrants; as commonly there is for those, qui lupos aut ursas occiderunt, aut catulos eorum deprehenderunt; that have killed either wolves or bears, or taken their whelps.*

*The § people may arraign their prince. The \*† ministers may excommunicate him. He that \*‡ by excommunication is cast into hell, is not worthy to enjoy any life upon earth.*

*"When St. Paul \*§ doth command us to*

\* History of the Church of Scotland, p. 187.

† Ibid. p. 25.

‡ Ibid. p. 58.

|| Ibid. p. 40.

§ Ibid. p. 62.

\*† Ibid. p. 70.

\*‡ Ibid. p. 70.

\*§ Euc. de jure Reg. p. 50. 55.

be subject and obedient to princes (Tit. 3.) Paul writ this in the infancy of the church. There were but few Christians then, and not many of them rich, or of ability, so as they were not ripe for such a purpose.

“ As if \* a man should write to such Christians as are under the Turk, in substance poor, in courage feeble, in strength unarmed, in number few, and generally subject to all kinds of injuries; would he not write as Paul did? so as the apostle did respect the men he wrote unto; and his words are not to be extended to the body or people of a commonwealth, or whole city.

“ For imagine (saith † he) that Paul were now alive, where both the king and people do profess christianity, and that there were such kings, as would have their becks to stand for laws; as cared neither for God nor man; as bestowed the church revenue scurris & balatronibus, upon jesters and rascals, and such as gibed at those, that did embrace the more sincere religion; what would he write of such to the church? surely except he would dissent from himself, he would say, that he accounted no such for magistrates. He would forbid all men from speaking unto them, and from keeping them company; he would leave them to their subjects to be punished; neither

\* Buc. de jure Reg. p. 56. † Ibid. p. 56, 57.

would

*would he blame them, if they accounted no longer such for their kings, as by the law of God they could have no society withal."*

Their unwarrantable resistance, against their lawful government.

These new apostles exercised many arbitrary and tyrannical acts against the government then by law established, and one particular instance serves to shew the degree of strength and confidence, to which their self-assumed power had then arisen. An attempt had been made to disturb the queen and her attendants at divine service at Holy-rood House on Sunday 24th August, 1561.

Proclamation against private individuals undertaking to alter the laws.

\* "For remedy whereof for the time to come, an order was issued the next day by the lords of the council, and authorised by the queen, in which it was declared, that no manner of person should privately or openly take in hand to alter or innovate any thing in the state of religion, which the queen found publickly and universally received at her majesties arrival in that realm, or attempt any thing against the same upon pain of death. But then it was required withal, that none of the leiges take in hand to trouble or molest any of her majesties domestick servants, or any other persons, which had ac-

\* Heylin s Aerijs Redivivus, l. iv. 166.

accompanied her out of *France* at the time then present, for any cause whatsoever, in word, deed, or countenance: and that upon the pain of death, as the other was. But notwithstanding the equality of so just an order, the earl of *Arran*, in the name of the rest of the congregation professed openly on the same day at the cross in *Edinburgh*, that no protection should be given to the queen's domesticks, or to any other person, that came out of *France*, either to violate the laws of the realm, or offend God's majesty, more than was given to any other subjects. And this he did, as he there affirmed, because God's law had pronounced death to the idolater, and the laws of the realm had appointed punishment for the sayers and hearers of mass; from which he would have none exempted, till some law were publickly made in parliament, and such as was agreeable to the word of God, to annul the former."

After the queen had declined or refused to comply with all the peremptory and unreasonable demands contained in a very insolent and harsh address from these innovating apostles from *Geneva*, which went to the utter subversion of the whole ecclesiastical establishment of the kingdom, Knox took " \* occa-

\* Heylin ubi supra, p. 170, 171.

sion in his preachings to the gentry of *Kyle* and *Galloway* (to which he was commissioned by the said assembly) to forewarn some of them of the dangers, which would shortly follow ; and thereupon earnestly to exhort them to take such order, that they might be obedient unto authority, and yet not suffer the enemies of God's truth to have the upper hand. And they, who understood his meaning at half a word, assembled themselves together on the 4th of *September* at the town of *Air*, where they entered into a common bond subscribed by the earl of *Glencarne*, the lords *Boyd* and *Uchiltry*, with one hundred and thirty more of note and quality, besides the provost and burgeses of the town of *Air*, which made forty more. The tenour of which bond was this that followeth :

The covenant.

*" We whose names are under written, do promise in the presence of God, and in the presence of his son our Lord Jesus Christ, that we, and every one of us, shall and will maintain the preaching of his holy evangel, now of his mercy offered and granted to this realm ; and also will maintain the ministers of the same against all persons, power, and authority, that will oppose themselves to the doctrine proposed, and by us received. And further, with the same solemnity we protest and promise, that every one of us shall*  
*assist*

*assist another, yea, and the whole body of the protestants within this realm, in all lawful and just occasions against all persons; so that whosoever shall hurt, molest, or trouble any of our bodies, shall be reputed enemies to the whole, except that the offender will be content to submit himself to the government of the church now established amongst us. And this we do, as we desire to be accepted and favoured of the Lord Jesus, and accepted worthy of credit and honesty in the presence of the godly.*

And in pursuance of this bond, they seize upon some priests, and give notice to others, that they would not trouble themselves of complaining to the queen or council, but would execute the punishment appointed to idolaters in the law of God, as they saw occasion, whensoever they should be apprehended. At which the queen was much offended; but there was no remedy.”

The covenan-  
ters assume to  
themselves the  
administration  
of justice.

I forbear to enter into particulars of the murders of David Rizzio, and of the king, and the other conspiracies and rebellions, which were the avowed and even boasted acts of the covenanters, out of respect to the noble families, to whom I do not attribute the slightest tincture of that fanatical enthusiasm and barbarity, which impelled some of their deluded ancestors to become actors in these disgraceful

Queen Mary  
driven out of  
her kingdom,  
seeks refuge  
from Elizabeth.

ful scenes of horror. Suffice it to say, that the queen was twice taken prisoner with an armed force of open rebels : compelled to resign her kingdom to her son, an infant under the age of two years, and to fly for protection to queen Elizabeth. Would I could draw a veil of oblivion and expiation over the treatment this unfortunate princess experienced from our government! May God for ever graciously continue upon this nation the effects of her prayer at the hour of execution, which was, for *the full forgiveness of all, that were authors of her death!*

The covenan-  
ters justify their  
proceedings by  
the doctrine of  
Calvin.

\* “ When the Scots commissioners were commanded by queen *Elizabeth* to give a reason of their proceedings against that queen, they justified themselves by the authority of *Calvin*; by which they did endeavour to prove (as my author hath it) *That the popular magistrates are appointed and made to moderate, and keep in order the excess and unruliness of kings; and that it was lawful for them to put the kings, that be evil and wicked, into prison, and also to deprive them of their kingdoms.* Which doctrine, how it relished with queen *Elizabeth*, may be judged by any, that knows with what a sovereign power she

\* Heylin's Acrius Redivivus, l. v. p. 202.

disposed

disposing of things in her own dominions, without fear of rendering an account to such popular magistrates, as *Calvin's* doctrine might encourage to require it of her. But *Calvin* found more friends in *Scotland*, than in all the world; there being no kingdom, principality, or other estate, which had herein followed *Calvin's* doctrine, in the imprisoning, deposing, and expelling their own natural prince, till the Scots first led the way unto it in this sad example."

It certainly argues a more intimate and certain knowledge of the cause or the antecedent to demonstrate *à priori* the effect or consequent, than from the effect or consequent to demonstrate *à posteriori* the cause or antecedent. Thus must we give more credit to arch-bishop Bancroft, who wrote in the year 1591 under queen Elizabeth, for his judgment of the real tendency of these Geneva doctrines, before their effects had been sensibly experienced in this country, than to Dr. Heylin and others, who had witnessed their dire consequences in the wounds and wretchedness of their afflicted country."

Bancroft's judgment of the Geneva doctrines before their effects had been experienced in this country.

\* "As you have heard how Mr. *Know*, being at *Geneva*, in queen *Mary's* time, la-

Bancroft Dangerous Positions, c. i. p. 34. & seq.

P p

boured,



boared, and afterward proceeded to reform religion in Scotland by force and arms : so did fundry *Englishmen*, that then lived there in like sort, according to the *Geneva* resolutions in that point, endeavour as much as lay in them to have kindled the like stirs at that time here in *England*. To which special end they did write here fundry letters and books wholly of this argument, viz. *That the then counsellors, the noblemen, inferior magistrates, and (rather than fail) the very people were bound before God to overthrow the superstition and idolatry, that was then in the land, and to reform religion, whether the queen would or no ; yea, though it were by putting her to death. Out of two of these English books, I have collected these seditious and consistorial propositions following :*

\* “ *All men, counsellors, noblemen, inferior magistrates, and people, are bound and charged to see the laws of God kept, and to suppress and resist idolatry by force.*”

† *If the magistrates shall refuse to put mass-mongers and false preachers to death, the people (in seeing it performed) do shew that zeal of God, which was commended in Phinees, de-*

\* Goodman, p. 73, 74, 77.

† Ibid. p. 196.

*destroying the adulterers, and in the Israelites against the Benjamites."*

\* "To teach, that it is (not lawful in any case to resist the superior powers, but rather to submit ourselves to punishment, is a dangerous doctrine ; taught by some, by the permission of God, for our sins."

† "It is not sufficient for subjects not to obey wicked commandments of their princes, but to withstand them also in doing the contrary, every man in his vocation and office."

‡ "Sheriffs, jailors, and other inferior officers ought not only not to cast the saints of God in prison (having commandment thereunto by the prince) for fear of losing their offices ; but to withstand evil, to support them, and to deliver them to the utmost of their power."

§ "If we see a sheep in danger to be devoured of a wolf, we are bound to deliver it : even so to our power are we bound to put to our hands, to deliver the children of God, when we see them pitiously in danger by God's enemies."

|| "It is the office of counsellors to bridle the affections of princes and governors : noblemen

\* Goodman, p. 30.

† Ibid. p. 63, 43, 59, 72.

‡ Ibid. p. 87, 88, 89, 90.

§ Ibid. p. 90.

|| Ibid. p. 33, 35.

were first ordained to bridle princes. Noblemen have their honour of the people to revenge the injuries of their kings, and not for their \* lusty hawking, nimble dicing and carding, singing and dancing, open bragging and swearing, false flattery and flattering, subtil picking and stealing, cruel polling and pilling, &c."

† "Subjects do promise obedience, that the magistrate might help them; which, if he does not, they are discharged of their obedience."

‡ "If magistrates without fear transgress God's laws themselves, and command others to do the like, they then have lost that honour and obedience, which otherwise their subjects did owe unto them; and ought no more to be taken for magistrates, but be examined, accused, condemned, and punished as private transgressors."

§ "Judges ought, by the law of God, to summon princes before them for their crimes; and to proceed against them as against all other offenders."

|| "Evil princes ought (by the law of God) to be deposed; and inferior magistrates ought chiefly to do it. ¶ Examples allowed of kings

\* Obed. p. 107. † Goodm. p. 190. ‡ Ibid. p. 119. 139. § Obedience, p. 111. || Goodm. ¶ Ibid. p. 110.

deposed, Edward II. Rich. II. Christierne of Denmark, &c.

\* “ *It is lawful to kill wicked kings and tyrants : and both by God’s law and man’s law, † Queen Mary ought to have been put to death, as being a tyrant, a monster, a cruel beast, &c. Examples : ‡ The subjects did kill the queen’s highness Athaliah ; Jehu killed the queen’s majesty Jezabel : Elias, being no magistrate, killed the queen’s majesty’s chaplains, Baal’s priests. These examples are left for our instruction. Where this justice is not executed, the state is most corrupt.*”

§ “ *When magistrates do cease to do their duties (in thus deposing or killing of princes) the people are as it were without officers : and then God giveth the sword into their hands , and he himself is become immediately their head : for to the multitude a portion of the sword of justice is committed ; from the which no person, king, queen, or emperor (being an idolater) is exempt ; he must die the death. The people, in the 25th of Numbers, did hang up certain of their heads and captains ; which ought to be for ever a perpetual example of their duty, in the like defection from God, to hang up such rulers, as shall*

\* Obedience, p. 99. 103,

† Goodm. p. 99. ‡ Obedience, p. 113, 114, 115.

§ Goodman, p. 180, 184, 185.

*draw them from him. \* If neither the inferior magistrates, nor the greatest part of people, will do their offices, (in punishing, deposing, or killing of princes) † then the minister must excommunicate such a king: any minister may do it against the greatest prince. ‡ God will send to the rest of the people (which are willing to do their duty, but are not able) some Moses or Othaniel. If they know any Jonathan, they must go unto him to be their captain; and he ought not to refuse them. By the word of God (in such a defection) a private § man (having some special inward motion) may kill a tyrant: as Moses did the Egyptian; as Phinees did the Lecherous; and Abud did king Eglon: or otherwise, a private man may do so, if he be commanded or permitted by the commonwealth."*

First establishment of Calvinists at Wandsworth.

The first regular establishment, after many fruitless attempts, of any colony from this antibasilican seminary in England, was made at Wandsworth on the 20th Nov. 1572; and these had been preceded by Cartwright's two thundering Admonitions to parliament, in the second of which he most seditiously libelled that high court; telling them in

\* Obedience, p. 115.

† Ibid. p. 116, 118.

‡ Goodman, p. 199, 200, 201.

§ Obedience, p. 110.

plain

plain terms, \* “ that the state did not shew  
itself upright, alledge the parliament what  
it will; that all honest men should find lack  
of equity, and all good consciences condemn  
that court; that it should be easier for Sodom  
and Gomorrha in the day of judgment, than  
for such a parliament; that there is no other  
thing to be looked for, than some speedy  
vengeance to light upon the whole land; but  
the political Machiavels of England provide  
as well as they can, though God do his worst;  
and finally, that if they of that assembly  
would not follow the advice of the *First Ad-*  
*monition*, they would infallibly be their own  
carvers in it; the church being bound to  
keep God’s orders, and nothing to be called  
God’s orders but their present platform.”  
Sir Christopher Hatton was then in high  
favour at court, † “ of a known averſeness to  
the Earl of Leicester, and consequently no  
friend to the puritan faction, This obstacle  
was to be removed one way or other, ac-  
cording to that principle of the ancient Do-  
natists, for murdering any man, of what rank  
soever, which opposed their practices. This  
office Burchet undertakes, and undertakes the  
office upon this opinion, that it was lawful

Cartwright’s  
libel upon par-  
liament.

Murder of Cap-  
tain Hawkins  
(instead of Sir  
Christopher  
Hatton) by  
Burchet.

\* Cartwright’s Second Admonition.

† Heylin’s Aeriſ Redivivus, L. vii. c. 275.

to assassinate any man who opposed the gospel." This Burchet stabbed Captain Hawkins in the street, mistaking his person for that of Sir Christopher Hatton; and when he was confined in the Tower he also stabbed one of his keepers. He was executed on the spot, on which he murdered Captain Hawkins. I will not conclude, with Dr. Heylin, that this wretch was encouraged or set on by his brethren to this desperate act; but nobody can deny, that the principles I have quoted from Goodman and others, are strong provocatives to such attempts.

\* "And having thus demonstrated, that the principles, by which this sort of men be unhappily guided, are most dangerous and destructive to civil government, I now descend to those their arts and devices, whereof by the help and influence of a most subtle, corrupt, and schismatical party in parliament, they made use, in order to the raising this late nefarious rebellion; the consequence whereof, *viz.* the extirpating of monarchy here, was in their design long before; however it may be thought by some, that *necessity* and *despair* put them upon that bold

The extirpation  
of monarchy,  
the first lesson  
of the Geneva  
School.

\* Dugdale's Short View, c. iii. p. 19.

exigent

exigent, after they had gone farther, than they thought they could (by any outward reconciliation or pardon) be safe ; for if need were, sufficient and undoubted testimony might yet be produced, who did hear a principal \* actor in this late woful tragedy, about a twelvemonth after the barbarous murder of King *Charles* the First, express these words: *I bleſs God, that I have now lived to ſee the ruine of monarchy, and that I have been instrumental in it ; for I do here acknowledge, that it hath been in my deſign ever ſince I was at Geneva, which is now thirty-eight years."*

About the year 1640, the Geneva party both in [Scotland and England, had by various means and practices ſo increaſed in numbers and ſtrength, that their reſiſtance to the eſtabliſhed government became open and ſyſtematic. In order to quiet affairs in Scotland (for theſe levellers there could never reſt under any ſort of ſpiritual or civil ſuperiority) king *Charles* the First intimated his intention of ſummoning a general convention at Glaſcow, at which he hoped, that all church differences and other diſcontents would be amicably and finally

The prevalence of the puritaniſcal party in England and Scotland.

\* Col. *Purefoy*, one of their council of ſtate.

ſettled :



settled: but all in vain; \* for they had so contrived the matter, that none were chosen to have voices in that assembly, but such as were sure unto the side, such as had formerly been under the censures of the church for their inconformity, and had refused to acknowledge the king's supremacy, or had declared their disaffections to episcopal government. And that the bishops might have no encouragement to sit amongst them, they cite them to appear as criminal persons, libel against them in a scandalous and unchristian manner: and finally, make choice of *Henderson*, a seditious *presbyter*, to sit as moderator or chief president in it. And though, upon the sense of their disobedience, the assembly was again dissolved by the king's proclamation; yet they continued as before in contempt thereof. In which session they condemned the calling of bishops, the articles of *Perth*, the liturgy, and the book of canons, as inconsistent with the scripture, and the kirk of *Scotland*. They proceed next to the rejecting of the five controverted points; which they called *Arminianism*: and finally, decreed a general subscription to be made to these constitutions. For not conforming

Henderson the  
moderator or  
president of the  
convention of  
Glasgow.

\* Heylen's *Acrius Redivivus*, L. xiii. c. 437.

whereunto the bishops, and a great part of the regular clergy, are expelled the country, although they had been animated unto the refusal, as well by the conscience of their duty, as by his majesty's proclamation, which required it of them.

They expel the bishops, and regular clergy out of their country.

“ They could not hope, that the king's lenity so abused might not turn to fury, and therefore thought it was high time to put themselves into arms, to call back most of their old soldiers from the warres in Germany, and almost all their officers from such commands in the *Netherlands*; whom to maintain, they intercept the king's revenue, and the rents of the bishops, and lay great taxes on the people, taking up arms and ammunition from the *States United*, with whom they went on ticket, and long days of payment, for want of ready money for their satisfaction. But all this had not served their turn, if the king could have been perswaded to have given them battel, or suffered any part of that great army, which he brought against them to lay waste their country: whose tenderness, when they once perceived, and knew withall how many friends they had about him, they thought it would be no hard matter to obtain such a pacification, as might secure them for the present from an

They take open steps towards rebellion.

The king withdraws his army, and disbands them.

absolute

The Scots take advantage of the king's lenity, and march an army into England.

absolute conquest, and give them an opportunity to provide better for themselves in the time to come, upon the reputation of being able to divert or break such a puissant army. And so it proved in the event: for the king had no sooner retired his forces both by sea and land, and given his soldiers a licence to return to their several houses, but the *Scots* presently protest against all the articles of the pacification, put harder pressures on the king's party, than before they suffered, keep all their officers in pay; by their messengers and letters apply themselves to the *French* king for support and succours. By whom encouraged under hand, and openly countenanced by some agents of the Cardinal *Richelieu*, who then governed all affairs in *France*, they enter into *England* with a puissant army, making their way to that invasion by some printed pamphlets, which they dispersed into all parts, thereby to colour their rebellions, and bewitch the people.

“And now the *English* *presbyterians* take the courage to appear more publickly in the defence of the *Scots* and their proceedings, than they had done hitherto. A parliament had been called on the 13th of *April*, for granting moneys to maintain the war against  
the

the Scots. But the commons were so backward in complying with the king's desires, that he found himself under the necessity of dissolving the parliament, which else had blasted his design, and openly declared in favour of the publick enemies. This puts the discontented rabble into such a fury, that they violently assaulted *Lambeth House*, but were as valiantly repulsed; and the next day break open all the prisons in *Southwark*, and release all the prisoners, whom they found committed for their inconformities.

\* “ Nor was it long before it openly appeared, what great power the presbyterian party had in London, which animated *Pennington* attended with some hundreds of inferior note, to tender a petition to the house of commons, against the government of bishops here by law established. It was affirmed, that this petition was subscribed by many thousands; and it was probable enough to be so indeed. But whether it was so or not, he gave thereby such an occasion to the house of commons, that they voted down the canons, which had passed in the late convocation, condemned the bishops and clergy in great sums of money, which had subscribed

The Scotch rebels counter-  
nanced by many  
in England.

Pennington's  
petition to par-  
liament against  
the bishops.

\* Heylin *Aerius Redivivus*, c. xiii. p. 438, 439.

Impeachment  
of the arch-  
bishop of Can-  
terbury, and  
other bishops  
and clergy.

to the same, decry the power of all provin-  
cial or national synods, for making any ca-  
nons or constitutions, which could bind the  
subject, until they were confirmed by an act  
of parliament. And having brought this ge-  
neral terror on the bishops and clergy, they  
impeach the archbishop of high treason,  
cause him to be committed to the Black  
Rod, and from thence to the Tower. Which  
being done, some other of the bishops and  
clergy must be singled out, informed against  
by scandalous articles, and those articles  
printed, without any consideration either  
true or false.

Doctrinal Cal-  
vinism estab-  
lished by the  
meeting in  
Westminster.

“ And though a convocation were at that  
time sitting, yet, to increase the miseries of  
a falling-church, it is permitted, that a pri-  
vate meeting should be held in the deanry of  
*Westminster*, to which some orthodox and  
conformable divines were called, as a foil  
to the rest, which generally were of *presby-*  
*terian* or *puritan* principles. By them it was  
proposed, that many passages in the liturgy  
should be expunged, and others altered to  
the worse. That decency and reverence in  
officiating God’s public service should be  
brought within the compass of innovations.  
That doctrinal *Calvinism* should be enter-  
tained in all parts of the church; and all  
their

their Sabbath speculations, though contrary to *Calvin's* judgment, superadded to it. But before any thing could be concluded in those weighty matters, the commons set their bill on foot against *root and branch*, for putting down all bishops and cathedral churches, which put a period to that meeting without doing any thing. And though the bill, upon a full debate thereon amongst the peers, was cast out of that house, and was not, by the course of parliaments, to be offered again; yet contrary to all former custom, it was prest from one time to another, till in the end they gained the point, which they so much aimed at."

By the personal insults offered to the king, and the open usurpation of the executive part of the government by the house of commons, his majesty was necessitated to fly into Yorkshire, where the party at Hull and elsewhere unmasked their designs by open armed rebellious resistance. And now, as Heylin observes, \* "comes Calvin's doctrine for restraining the power of kings to be put in practice." From henceforth the very relation of sovereign and subject seems to have ceased between that party and the king, as

The rebellion  
formally com-  
menced at  
Hull.

\* Heylin's *Aerius Redivivus*, p. 144.

appears

The demands  
of the rebels.

appears upon the face of all their future acts. They insisted, by their nineteen propositions to the king, amongst many other insolent demands, \* “ *That all the lords of his majesty’s council, all the great officers both of court and state, the two chief justices, and the chief barons of the exchequer, should be from hence forth nominated and approved by both houses of parliament. That all the great affairs of the kingdom should be managed by them, even unto the naming of a governor for his majesty’s children, and for disposing them in marriage at the will of the houses. That no popish lord (as long as he continued such) should vote in parliament. And amongst many other things of like importanee, That he would give consent to such a reformation of church-government and liturgy, as both the houses should advise.* But he knew well enough that to grant all this was plainly to divest himself of all regal power, which God had put into his hands ; and therefore he returned such an answer to them, as the necessity of his affairs compared with those impudent demands, did suggest unto him. But as for their demand about reformation, he had answered it in part before they made it, by ordering a col-

\* Heylin, p. 145. & seq.

lection of fundry petitions presented to himself, and both houses of parliament in behalf of *episcopacy*, and for the preservation of the liturgy to be printed and published. By which petitions it appeared, that there was no such general disaffection in the subjects unto either of them (whether they were within the power of the houses, or beyond their reach) as by the faction was pretended; the total number of subscribers unto seven of them only (the rest not being calculated in the said collection) amounting to four hundred eighty-two lords and knights, one thousand seven hundred and forty esquires and gentlemen of note, six hundred thirty-one doctors and divines, and no fewer than forty-four thousand five hundred fifty-nine freeholders of good name and note.

The majority of the nation wished to preserve episcopacy and the liturgy.

“ And now the war begins to open. The gentlemen of *Yorkshire* being sensible of that great affront, which had been offered to his majesty at the gates of *Hull*, and no less sensible of those dangers, which were threatened to him by so ill a neighbourhood, offered themselves to be a guard unto his person. The houses of parliament upon the apprehension of some fears and jealousies, had took a guard unto themselves in *December* last; but they conceived the king had so much innocence, that he needed none; and

The gentlemen of *Yorkshire* openly declare for the king.



therefore his accepting of this guard of gentlemen is voted for a levying of war against the parliament, and forces must be raised in defence thereof. It happened also, that some members of the house of commons, many of his domestic servants, and not a few of the nobility and great men of the realm, repaired from several places to the king at *York*; so far from being willing to involve themselves in other men's sins, that they declared the constancy of their adhesion to his majesty's service. These men they branded first by the name of *malignants*, and after looked upon them in the notion of evil counsellors; for whose removing from the king they pretend to arm, (but now the state device must be taken up) as well as in their own defence; towards the raising of which army, the *presbyterian* preachers so bestir themselves, that the wealthy citizens send in their plate, the zealous sisters robbed themselves of their bodkins and thimbles, and some poor wives cast in their wedding-rings, like the widow's mite, to advance the service. Besides which, they set forth instructions, dispersed into all parts of the realm, for bringing in of horses, arms, plate, money, jewels, to be repaid again on the *publick faith*; appoint their treasurers for the warr; and nominate the earl of

The zeal of the  
puritanical party  
in forwarding  
the rebellion.

of *Essex* for their chief commander, whom some disgraces from the court had made wholly theirs. Him they commisionate to bring the king from his *evil counsellors*, with power to kill and slay all such, as opposed them in it. That which served their turns best was a new distinction, which they had coined between the *personal* and *political* capacity of the supreme magistrate; alledging, that the king was present with the houses of parliament in his *political* capacity, though in his *personal* at *York*; that they might fight against the king in his *personal* capacity, though not in his *politick*, and consequently, might destroy *Charles Stuart* without hurting the king. This was good *presbyterian* doctrine; but not so edifying at *York*, as it was at *Westminster*. For his majesty finding a necessity to defend *Charles Stuart*, if he desired to save the king, began to entertain such forces, as repaired unto him, and put himself into a posture of defence against all his adversaries."

The rebel party justify themselves under the distinction of acting against the personal but not the political capacity of the king.

The war was openly carried on with various success; the rebel party pillaged the towns and laid waste the country with unparalleled ferocity, and demolished the churches with more than pagan fury and hatred to religion; but after their success

Stipulation with  
the Scots to join  
in the rebellion.

seemed to fail them, both in the north and west, \* “no course was found fitter for them, than to invite the *Scots* to their aid and succour, whose amity they had lately purchased at so dear a rate. Hereupon *Armin* and some others are dispatched for *Scotland*; where they applied themselves so dexterously to that proud and rebellious people, that they consented at the last to all things, which had been desired. But they consented on such terms, as gave them an assurance of one hundred thousand pound in ready money; the army to be kept both with pay and plunder; the chief promoters of the service to be rewarded with the lands and houses of the *English bishops*, and their commissioners to have as great an influence in all counsels both of peace and war, as the lords and commons.

“But that, which proved the strongest temptation to engage them in it, was an assurance of reducing the church of *England* to an exact conformity in government and forms of worship to the kirk of *Scotland*; and gratifying their revenge and malice, by prosecuting the archbishop of *Canterbury* to the end of his tragedy. For compassing which ends, a

\* Heylin, ubi supra, l. xiii. p. 453.

solemn league and covenant is agreed between them, first taken and subscribed to by the *Scots* themselves, and afterwards by all the members in both houses of parliament, as also by the principal officers of the army, all the divines of the assembly, almost all those which lived within the lines of communication, and in the end by all the subjects, which either were within their power, or made subject to it. Now by this covenant the party was to bind himself, amongst other things, first, *That he would endeavour in his place and calling to preserve the reformed religion in Scotland, in doctrine, discipline, and government; that he would endeavour, in like manner, the reformation of religion in the kingdoms of England and Ireland, according to the word of God, and the example of the best reformed churches; but more particularly to bring the churches of God in all the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church government, and directory for worship and catechising. Secondly, That without respect of persons, they would endeavour to extirpate popery and prelacy; that is to say, church government by archbishops, bishops, their chancellors and commissaries, deans, deans and chapters, archdeacons, and all other ecclesiastical officers*

The league and covenant.

*officers depending on it. And thirdly, That he would endeavour the discovery of such as have been, or shall be incendiaries, malignants, and evil instruments, either in hindering the reformation of religion, or in dividing between the king and his people, &c. whom they should bring to condign punishment before the supreme judicatories of either kingdom, as their offences should deserve."*

It would be impossible to make a just representation of the rebellious tyranny practised by this reforming herd of zealots over the king, clergy, and people, without entering more largely into the history of that disgraceful usurpation, than the intent and bounds of this publication will admit of. By whatever nominal religious distinction or appellation the rebels were then known, whether as presbyterians, puritans, or independents, their actions represent them as raging with that savage lust for levelling, that knew no political medium between the fiercest tyranny, and the most unbridled anarchy. A leveller of the last century was well described by one, who probably was personally acquainted with many of the actors in that bloody scene of our national disgrace. \* "He has more ambition in his

Description of a  
Leveller of the  
last century.

\* Secret Hist. of the Calves Head Club, p. 24.

breast,

breast, than the most extravagant tyrant in the universe. He is very fearful of being made a slave, but is very desirous of being a slave-maker; for whenever he cries out for liberty, he is endeavouring to destroy it; and never thinks himself a complete free-man, till the nation he lives in, has no religion to guide him, no law to punish him; for his chief aim is to pull down all, when the madness of the common people gives him a fair opportunity. In all conditions, he is as restless as a froward infant, whilst breeding of his teeth; will please no government, and with no government be pleased. He is as tempestuous as the ocean, that swells into rage with every gale, that happens, and seldom reconciles himself to a calm, till like that he has been the occasion of some remarkable mischief."

I shall not attempt to wound the feelings of those of my countrymen, whose minds want no conviction, by a painful rehearsal of the tragical catastrophe of our late sovereign king Charles the First: \* *who was given up to the violent outrages of wicked men, to be despitefully used, and at last murdered by*

\* Vid. Book of Common Prayer: Form of Prayer for the 30th of January.

*them.*

*them. And, though we cannot reflect upon so foul an act but with horror and astonishment,"* yet too true is it, that even in this enlightened age is the commemoration of this day kept up by many in a spirit widely different from that, which the church and \* parliament of England countenance and recommend. † "On the bringing of king Charles a prisoner to London, in my opinion, there was sufficient cause for triumph. The 30th of January was (to use a phrase of admiral Keppel's) a proud day for England, as well as the 14th of July for France; and it will be remembered as such by the latest pos-

Dr. Priestley's  
exultation in the  
murder of king  
Charles.

\* The act of parliament, which, as already observed, binds every individual unexceptionably in this community, is of the same tenure and spirit as the service of the church. I mention this to prove how little any set of individuals are authorized, upon the universal principles of all governments, to vilify, resist, and counteract the most solemn religious and legislative acts of the majority. "The horrid and execrable murder of your majesty's royal father, our late most gracious sovereign Charles the First, of ever blessed and glorious memory, hath been committed by a party of wretched men, desperately wicked, and hardened in their impiety, who having first plotted and contrived the ruin and destruction of this excellent monarchy, and with it of the true reformed protestant religion, which had been so long protected by it and flourished under it." 12 Car. II. c. xxx.

† Dr. Priestley's Fifth Letter to Mr. Burke, published last year.

terity

terity of *freemen*." Little surely does it become a loyal subject of Great Britain triumphantly to revel in the remembrance of such scenes ; let him rather put on the awful feelings of the noble historian of this rebellious and bloody tragedy.

\* " The several unheard of insolencies, which this excellent prince was forced to submit to, at the other times he was brought before that odious judicatory ; his majestic behaviour, and resolute insisting upon his own dignity, and defending it by manifest authorities in the law, as well as by the clearest deductions from reason ; the pronouncing that horrible sentence upon the most innocent person in the world ; the execution of that sentence by the most execrable murder, that was ever committed since that of our blessed Saviour, and the circumstances thereof ; the application and interposition, that was used by some noble persons to prevent that woful murder, and the hypocrisy, with which that interposition was eluded ; the saint-like behaviour of that blessed martyr, and his christian courage and patience at his death, are all particulars so well known, and have been

The true and proper sentiments upon the death of king Charles.

† Clarendon's Hist. of the Civil War, vol. iiii. lib. xi. p. 197.



so much enlarged upon in a treatise peculiarly writ to that purpose, that the farther mentioning it in this place would but afflict and grieve the reader, and make the relation itself odious, as well as needless, and therefore no more shall be said here of that deplorable tragedy, so much to the dishonour of the nation, and the religion professed by it, though undeservedly."

Reasons for not entering into the particulars of the rebellion.

The publisher of Lord Clarendon's history has furnished me with a reason which fully warrants me in passing over the particular scenes, which were effected by the levelling party of the last century. \* "It is a difficult province to write the history of the civil wars of a great and powerful nation, where the king was engaged with one part of his subjects against the other, and both sides were sufficiently enflamed, and the necessity of speaking the truth of several great men, that were engaged in the quarrel on either side, who may still have considerable relations descended from them now alive, makes the task invidious as well as difficult."

The avowed purport of this publication is to prove, that the present establishment of our

\* Preface to the History of the Civil War, p. 11. fol. Edition of Oxford.

constitution and government is admirably calculated to ensure the subordination, and preserve the welfare and happiness of all British subjects. I hope the philosophers and politicians of the present illuminated day will again forgive me for recurring (after the example of Mr. Burke \*) to the sentiments of the last century.

\* *Appeal from the New to the Old Whigs*, p. 84. "It is current, that these old politicians knew little of the rights of men; that they lost their way by groping about in the dark, and fumbling among rotten parchments and musty records. Great lights, they say, are lately obtained in the world; and Mr. Burke, instead of shrowding himself in exploded ignorance, ought to have taken advantage of the blaze of illumination, which has been spread about him. It may be so. The enthusiasts of this time, it seems, like their predecessors in another faction of fanaticism, deal in lights. Hudibras pleasantly says of them, they

Have lights, where better eyes are blind,

As pigs are said to see the wind.

"The author of the *Reflections* has *heard* a great deal concerning the modern lights; but he has not yet had the good fortune to *see* much of them. He has read more than he can justify to any thing but the spirit of curiosity, of the works of these illuminators of the world. He has learned nothing from the far greater number of them, than a full certainty of their shallowness, levity, pride, petulance, presumption, and ignorance. Where the old authors, whom he has read, and the old men, whom he has conversed with, have left him in the dark, he is in the dark still. If others, however, have obtained any of this extraordinary light, they will use it to guide them in their researches and their conduct."

"There

How the old parties of this country have become extinct.

\* “ There hath been within the compass of few years much talk, and God knows, too many ill effects too of factions in this kingdom ; and we have lived in our days to see the two great parties of late known by the names of *Whig* and *Tory* directly change their ground ; and those, who were formerly the anticourtiers become as pliant and obsequious, as ever they were, who had been the most found fault with on that score. But we are humbly of opinion, that at this time of day neither of those parties have the game in their hands, as they have formerly perhaps fancied to themselves. But they, who shall be so honest and so wise constantly to prefer the true interest of England to that of any other country or people, preserve the religion and the laws, protect and promote the trade of the nation, thriftily and providently administer the publick treasure, and study to maintain the sovereignty of our seas, so naturally, so anciently, and so justly the true defence of this kingdom ; that body, whomsoever it shall be composed of, shall have the weight of England on its side ; and if there can be any of another frame, they must in the end prove so many miserable rotten reeds.”

\* Preface to Clarendon's Hist. p. 8.

The general idea of these horrid scenes of blood and devastation, which for twenty years together overwhelmed this unfortunate land, is faithfully expressed by the noble historian, who reports them. \* “ Though the hand and judgment of God will be very visible in infatuating a people (as ripe and prepared for destruction) into all the perverse actions of folly and madness, making the weak to contribute to the designs of the wicked, and suffering even those by degrees, out of conscience of their guilt, to grow more wicked than they intended to be ; letting the wise to be imposed upon by men of small understanding, and permitting the innocent to be possessed with laziness and sleep in the most visible article of danger ; uniting the ill, though of the most different opinions, opposite interests, and distant affections ; in a firm and constant league of mischiefs ; and dividing those, whose opinions and interests are the same, into faction and emulation more pernicious to the publick, than the treason of the others ; whilst the poor people under pretence of zeal to religion, law, liberty, and parliaments (words of pretious esteem in their just signification) are furiously hurried into

The ideas and judgments of our ancestors of the rebellion.

\* Clarendon's Hist. of the Civil Wars, vol. i. p. 3 & 4.

actions introducing atheism, and dissolving all the elements of christian religion ; cancelling all obligations, and destroying all foundations of law and liberty, and rendering not only the privileges, but the very being of parliaments desperate and impracticable ; I say, though the immediate finger and wrath of God must be acknowledged in these perplexities and distractions, yet he, who shall diligently observe the distempers and conjunctions of time, the ambition, pride, and folly of persons, and the sudden growth of wickedness, from want of care and circumspection in the first impressions, will find all these miseries to have proceeded, and to have been brought upon us by the same natural causes and means, which have usually attended kingdoms swoln with long plenty, pride, and excess, towards some signal mortification and castigation of heaven. And it may be, upon the consideration how impossible it was to foresee many things, that have happened, and of the necessity of overlooking many other things, we may not yet find the cure so desperate, but that by God's mercy the wounds may be again bound up ; and then this prospect may not make the future peace less pleasant and durable."

The real effects of this convulsive state of  
usur-

usurpation and tyranny could not be so sensibly felt, nor probably so truly and pathetically expressed, as by those resolute patriots \* in 1659, who had seen and suffered the

\* Notwithstanding I have endeavoured to shew the tendency and the effects of certain principles and doctrines imported from Geneva into this country, as contradictory to and subversive of the fundamental principles of our government, yet I am far from concluding, that every person professing the presbyterian religion, though it be generally supposed to have originated also from Geneva, is infected with them. They are in fact principles of state policy, not tenets of a revealed religion. Much less would I be supposed to intimate, that the profession of the presbyterian religion, as it is by law established in Scotland, or as it is tolerated in England, is in any manner incompatible with the strictest duties of a loyal subject of this country. There cannot be a stronger instance of this, than the part which the more respectable members of the presbyterians took in the restoration of king Charles the Second. So says Lord Clarendon (vol. iii. p. 601.) " With these commissioners from the parliament and from the city, there came a company of their clergymen to the number of eight or ten, who would not be looked upon as chaplains to the rest, but being the popular preachers of the city (*Reynolds, Calamy, Case, Manton*, and others, the most eminent of the presbyterians) desired to be thought to represent that party. They intreated to be admitted all together to have a formal audience of his majesty; where they presented their duties, and magnified the affections of themselves and their friends, who, they said, had always, according to the obligation of their covenant, wished his majesty very well; and had lately, upon the opportunity, that God had put into their hands, informed the people of their duty; which,

The sentiments  
of those who  
brought about  
the restoration.

the whole series and rigour of them ; by their bold and spirited declaration, they opened the deluded eyes, and roused the depressed spirits of the nation to bear up manfully against the storm, and so at length brought the shattered wreck of the state vessel safe into harbour.

\* “ They said, that since God had suffered the spirit of division to continue in this nation, which was left without any settled foundation of religion, liberty, and property, the legislative power usurped at pleasure, the army raised for its defence misled by their superior officers, and no face of government remaining, that was lawfully constituted ; therefore they being sensible of their duty and utter ruin, if these distractions should continue, had taken arms in vindication of the freedom of parliaments, of the known laws, liberty, and property, and of the good people of this nation groaning under insupportable taxes ; that they cannot despair of the blessing of

which they presumed, his majesty had heard had proved effectual, and been of great use to him. They thanked God for his constancy to the protestant religion, and professed, that they were no enemies to moderate episcopacy, only desired, that such things might not be pressed upon them in God’s worship, which in their judgment, who used them, were acknowledged to be matters indifferent, and by others were held unlawful.”

\* *Clar. Hist. of the Civil Wars*, b. xvi. vol. iii. p. 526.

God,

God, nor of the cheerful concurrence of all good people, and of the undeceived part of the army, whose arrears and future advancement they would procure, suffering no imposition or force on any man's conscience.

If I am charged with inconsistency in depreciating the acts of the effective government of the nation, during this tyrannical usurpation of twenty years, after having established the principle, that *the acts of the majority are conclusive upon the whole*, I first oppose to it that unexceptionable maxim, that there can be no real government, which is not admitted by the *free* consent of the majority of the people. Now to prove, that the scenes of bloodshed, cruelty, and tyranny from the year 1641 to the year 1660, were not by the free assent of the majority of the nation, I shall beg leave to adduce the following authorities in evidence. \* “ The number of the commons, that passed their act for the king's trial were but forty-six, not the tenth part of a house of commons duly constituted ; and if the people had been asked one by one, not one in a hundred would have consented to the king's murder, or chosen such representatives (if they might have had a free choice),

The rebellion  
not the free act  
of the majority  
of the nation.

\* D. Brady's Hist. of the Succession, p. 357.



as would have consented to it ; and yet this charge is drawn up and urged against the king, as the act of the commons and all the people of England ; or lastly, who can deny, that they published for law and right whatsoever they did or said, though it were never so treasonable, vile, or wicked." In the answer of the house of commons to King Charles the Second's letter, or declaration from Breda, we shall hear some more authentic accounts of the fewness of the actors and abettors in these scenes of horror and tyranny. \* " And we beseech your majesty, we may add this farther for the vindication of parliaments, and even of the last parliament, convened under your royal father of happy memory, when as your majesty well observes, through mistakes and misunderstandings, many inconveniences were produced, which were not intended ; that those very inconveniences could not have been brought upon us by those persons, who had designed them, without violating the parliament itself ; for they well knew it was not possible to do a violence to that sacred person, whilst the parliament, which had vowed and covenanted for the defence and safety of that person remained entire. Surely, Sir, as the

\* Vid. Clar. Hist. of the Civil Wars, b. xvi. vol. iii. p. 592.

persons of our kings have ever been dear unto parliaments, so we cannot think of that horrid act committed against the precious life of our late sovereign, but with such a detestation and abhorrency, as we want words to express it; and next to wishing it had never been, we wish it may never be remembered by your majesty, to be unto you an occasion of sorrow, as it will never be remembered by us, but with that grief and trouble of mind, which it deserves; being the greatest reproach, that ever was incurred by any of the *English* nation, an offence to all the protestant churches abroad, and a scandal to the profession of the truth of religion here at home; though both profession and true professors, and the nation itself, as well as the parliament, were most innocent of it, it having been only the contrivance and act of some few ambitious and bloody persons, and such others, as by their influence were misled. And as we hope and pray, that God will not impute the guilt of it, nor of all the evil consequences thereof, unto the land, whose divine justice never involves the guiltless with the guilty."

The whole nation not guilty.

Though Dr. Priestley finds occasion of exultation and triumph in the annual commemoration of the 30th of January, yet in ano-

The murderers of king Charles a faction, and not representatives of the nation.

ther part of his works he owns, that from the nature of things it was necessary, that the opposition to king Charles's government should begin from a few, who might therefore be called a *faction*, for whom there was no safety short of his death. \* "For," says he, "it is to be regretted, that the situation of things was such, that the sentence could not be passed by the whole nation, † or their representatives solemnly assembled

\* Priestley upon Government, p. 39.

† Lord Clarendon relates the following anecdote, not irrelevant to the present subject, which happened on the first day of King Charles's trial. *Hist. of the Civil Wars*, vol. iii. b. xi. p. 196. "When all those who were commissioners had taken their places, and the king was brought in, the first ceremony was, to read their commission, which was the ordinance of parliament for the trial; and when the judges were all called, every man answering to his name, as he was called, and the president being first called and making answer, the next who was called being the general, Lord *Fairfax*, and no answer being made, the officer called him the second time, when there was a voice heard that said, 'he had more wit than to be there;' which put the court into some disorder; and somebody asking who it was, there was no answer, but a little murmuring; but presently, when the impeachment was read, and that expression used, of 'all the good people of England,' the same voice in a louder tone answered, 'No, nor the hundredth part of them;' upon which one of the officers bid the soldiers give fire into that box, whence those presumptuous words were uttered; but it was quickly discerned, that it was the general's wife the lady *Fairfax*, who had uttered both those sharpe sayings, who was presently persuaded or forced to leave the place, to prevent any new disorder.

She

*assembled for that purpose. I am sensible indeed that the generality of the nation at that time would not have voted for the death of their sovereign."*

From what I have already said, may we collect a specimen of the deadly fruit, which this faction would produce, if the growth of the plant were in any manner encouraged in this country. Some of the most noxious herbs, under the disguise of improper names, find their way into the fairest gardens; but one fatal instance of their deadly poison, induces the melancholy but requisite caution to prevent their future progress to maturity. Thus confident am I, that the abusive application of the term *religious* to these seditious and rebellious political sectaries, has alone procured the admission, adoption, or toleration of them in our constitution. We have

Seditious political sectaries masked under a religious appellation.

She was of a very noble extraction, one of the daughters and heirs of *Horace Lord Vere of Tilbury*, who having been bred in *Holland*, had not that reverence for the church of *England*, as she ought to have had, and so had unhappily concurred in her husband's entering into rebellion, never imagining what misery it would bring upon the kingdom, and now abhorred the work in hand as much, as any body could do, and did all she could to hinder her husband from acting any part in it. Nor did he ever sit in that bloody court, though he was throughout overwitted by *Cromwell*, and made a property to bringing that to pass, which could very hardly have been otherwise effected."

been

been long ago told by good authority, that *from their fruits ye shall know them*; and I confidently affirm what nobody will deny, that the mild spirit of the British constitution never will be disgraced by the intolerance and persecution of those, who know the use of no other, than the spiritual weapons of St. Paul to propagate their doctrine, who recommend the truth of it by their meekness, humility, and peaceable submission to the powers of the state, and command respect by the charity they practise towards their neighbour, and the edifying example of their own innocence.

As God has left the choice and form of government to each community, so has he given to each community, the necessary powers and means for its own preservation, which in their nature must be variable, that they may fit and be suitable, to that indefinite variety of circumstances and occasions, which in the occurrences and fates of empires are possible to arise. Dr. Kippis in his sermon upon the centenary commemoration of the revolution has expressed an idea highly liberal in its tendency, and which if carried into execution would perhaps add the most lasting security to the peace, welfare, and prosperity of our excellent constitution. \* “ Perhaps it

\* Dr. Kippis's Sermon, p. 29.

may be reserved for the farther glory of this reign to abolish all penal laws in matters of religion, and to put every man on the fair footing of being answerable to God only for his conscience, while he gives security for his civil allegiance and peaceable behaviour, as a member of the community."

## C O N C L U S I O N.

**I**N the variety of matter, which the nature of my undertaking has obliged me to touch upon, I have unintentionally exceeded the limits, to which I originally meant to confine myself. The importance however of the questions themselves will, I hope, screen me from the imputation of prolixity. I have throughout the work endeavoured to make a faithful and candid representation of every fact, that I had occasion to speak of; if any however shall be found to have been misconceived or misrepresented, I solemnly disavow the intention of misleading others, though I may have erred myself.

Attempts have been lately made with much rancour and much insolence to misrepresent and vilify our constitution. I have exerted my humble efforts to counteract them; and I shall ever boast of my wishes to represent to my countrymen the constitution of this kingdom as the most perfect work of human polity. If in the gradual formation of it, we have been more fortunate or more wise, than our neighbours, we may also still boast of being the foremost towards attaining the highest possible perfection.

perfection of civil government. We have a basis still to work and improve upon, formed of the venerable materials of millennial experience, which time and circumstances have cemented, settled, and incorporated into a body of the most durable solidity. A basis widely different from those composed of the crumbling plaister of Paris, upon which the modern state architects have been unable to erect with stability the slightest temporary superstructure.

The alliance which our constitution has instituted between church and state has obliged me to enter further into the topic of religion, than a mere dissertation upon the civil constitution of a country might seem to require. I am aware of the extreme difficulty of treating religious subjects in a manner satisfactory to all persons. It has neither been my province nor my intention to discuss the merits of any religious persuasion whatever; and if any reflection or observation has escaped me, that can displease or offend the theologians \* of any religious

\* I am sensible, that in quoting the authorities of some of our constitutional and legal writers, I have sometimes adopted phrases, which may not stand the severe ordeal of theological precision: for instance, it is usually said, that the king of England *appoints* bishops, &c.; now neither in *legal*, *constitutional*, nor *theological* accuracy, is this word *appoint* proper; because it is not consonant with the fact. For if by the word *appoint* we are to understand the gift or collation of *real spiritual power or jurisdiction*, which the act of consecrating gives not, and which consists in the power of commanding in *spiritual* matters under pain of sin, *spiritually censuring*



religious society, I trust in the spirit of that christian meekness, to which they all lay claim, that the unintended offence will be forgiven. But if in tracing and discussing the principles of civil government, I have endeavoured to caution my countrymen against the effects of certain political doctrines, which have already proved fundamentally injurious to our constitution, I have done it from the conviction that as the English constitution is not repugnant to the faith of a true christian, so principles subversive of this constitution cannot have been revealed by the divine author of that faith. I no more attribute these turbulent and anarchical principles to the doctrines and faith of any society

censuring and excommunicating, &c. it is evident, that the law vests no such prerogative, right, or power in the crown. For upon the avoidance of a bishoprick, by statute 25 H. VIII. c. 20. the king (Bl. vol. i. p. 379) sends to the dean and chapter his usual licence to proceed to election, called the *congé d'elire*, which was the constant usage for many centuries before the reformation, and this *congé d'elire* is accompanied with a letter missive from the king, containing the name of the person, whom he would have them elect; and if the dean and chapter delay their election above twelve days, the nomination shall devolve to the king, who may by letters patent appoint such person, as he pleases. This election or nomination, if it be of a bishop, must be signified by the king's letters patent to the archbishop of the province; if it be of an archbishop to the other archbishop and two bishops, or to four bishops, requiring them to *confirm, invest, and consecrate* the person so elected." This *confirmation, investiture and consecration* are the acts, by which the constitution supposes the real *spiritual* jurisdiction to be conferred upon the bishop. Before the reformation this *confirmation and investiture* were made by the bishop of Rome, as the Roman catholics held him to be the spiritual supreme head of the church, and from him deduced the gradations and regularity of their hierarchy. But though the nation have renounced that religion, and have transferred to their king whatever part of the headship of the civil

society of christians; than I lay to their charge the maxims and practices of robbers and pirates.

To prove, that any human institution has attained its *ne plus ultra* of perfection is to produce internal evidence of a radical deficiency or vice in the system; and to prove a continued progress in the melioration or improvement of a system is conclusive evidence, that the ground-work of the superstructure is in its nature firm and permanent. I have endeavoured to trace and mark the advances, which our constitution has been gradually making since its first institution towards the perfection

civil establishment of religion they formerly allowed to the pope, yet it is evident beyond cavil or doubt, that they neither attempted nor intended to invest, nor did they by law invest the king with a power of collating *spiritual* jurisdiction; for they expressly direct the bishop to apply to the archbishop or other bishops for that, which was not in its nature conferable by the laity; for though the law subjects the archbishop and bishops to the severest penalties and forfeitures, if after such election or nomination they refuse to *confirm* and *invest* the person elected or nominated, yet it authorizes not the king or any other persons to *confirm* and *invest*, or to grant or collate the real spiritual jurisdiction, nor does it say or suppose that the person elected or nominated becomes a real spiritual pastor of Christ's church without such confirmation or investiture. When the bishop has been elected or nominated, and confirmed and invested, he then is to sue to the king for his temporalities, which as appendages of the civil establishment of religion were holden by our Roman catholic ancestors, as well as by the nation at this day, to be at the disposal and under the controul of the state, and not of the supreme or other spiritual ministers of the church of Christ; for in the year 1350 (25 Ed. III.) though they then did and for many centuries afterwards, continued to acknowledge the *spiritual* supremacy of the pope, they complained, that he assumed a right to give and grant church benefices to aliens and denizens, as if he had been patron and advowee of the said dignities and benefices, as he was not of right by the law of England.

of

of liberty; and in this progress do we find the surest earnest of future improvements, as the exigencies of times and circumstances shall require them.

To the blessings of our happy constitution do we at this moment owe the exalted situation we hold amidst surrounding nations envying, distracted, and distressed. Who then but an avowed enemy will attempt to force or seduce us from the sure hold of such unparalleled transcendence? The continuance alone of the means, by which we have attained the glory can ensure it to our posterity. Let every true Englishman therefore join in the patriotic wish for the constitution,

ESTO PERPETUA.

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